

# SBA

SOP 50 46 1

---

## Claims and Recovery Program

Office of Surety Guarantees



**SMALL BUSINESS ADMINISTRATION  
STANDARD OPERATING PROCEDURE**

National

SUBJECT: Claims and Recovery Program	S.O.P.		F
	SECTION 50	NO. 46	

INTRODUCTION

1. Purpose. To establish written guidelines and procedures for surety bond guarantee claims reimbursement recovery activity.
2. Personnel Concerned. Office of Surety Guarantees' claims and recovery personnel.
3. Directives Canceled. SOP 50 46.
4. Originator. Office of Surety Guarantees.

AUTHORIZED BY:  Robert J. Moffitt Associate Administrator Office of Surety Guarantees		EFFECTIVE DATE 1/15/99
		PAGE 1

SBA Form 989 (5-90) Ref: SOP 00 23



## Table of Contents

Paragraph		Page
Chapter 1	General Overview of Surety Bond Guarantee Program	
1.	What is the General Scope and Purpose of this SOP?	7
2.	What is the Program's Statutory Basis?	7
3.	What are the Program Objectives?	7
4.	What is the Program's Authority?	7
a.	Headquarters Office	7
b.	Area Offices	8
c.	Surety Companies	8
Chapter 2	Claim for Reimbursement Procedures	
1.	When Does the Surety Notify the SBA of a Claim Situation?	9
2.	What is a "Rumble" Situation?	9
3.	What is an "Imminent Breach?"	9
4.	How Does CRD Handle Imminent Breach Requests?	10
5.	When Does CRD Request a Contractor's File?	10
6.	How Does CRD Request a Contractor's File?	10
7.	What Happens to the File Once it is Received?	10
8.	What Happens When CRD Cannot Locate a File?	11
9.	How is the Claim File Organized?	11
10.	How Does a Surety Inform SBA of Claim and Recovery Activity?	11
11.	What is a Claim Status Code?	12
12.	How Does CRD Analyze the Contractor File?	12
13.	What Happens When a Bid Bond Default Occurs?	15
14.	How Does the Surety Request Reimbursement from SBA?	15

15.	How Does CRD Process Claims for Reimbursement Requests?	16
a.	Initial Payment	16
b.	Subsequent Payments	17
c.	Trust Accounts	18
d.	Distribution of Approved SBA 994Hs	18
16.	How are Delays in Reimbursements to Sureties Prevented?	18
17.	How Does CRD Track Missing Payments?	19
18.	Can CRD Release Information Contained in Case Files?	19

### Chapter 3 Subrogation and Recovery Procedures

1.	How Does CRD Handle Subrogation Activities?	21
a.	Conditions Necessary to Transfer a Claim File on a Bond Guarantee to Subrogation/Recovery Status	21
b.	Status Reports	21
c.	Sources of Recovery and Related Documentation	21
2.	When are Funds Due SBA?	23
a.	Incoming Check(s) Procedures	23
b.	Due SBA Procedures	24
c.	Recovery Not Received by SBA	24
d.	Recovery Applied to an Incorrect SBG Number	25
e.	Refund of Recovery Money	25
3.	What are the Procedures for Placing a File in "Closing Final" Status?	25
a.	File Review	25
b.	Closing Process	25
c.	Disposition of a Closed-Final File	26
4.	What is an Indemnity Settlement?	26
a.	Definition of a Settlement	26
b.	Types of Settlements	26
c.	Policy Guidelines for Settlements	27

	d. Procedures Used to Review a Settlement Proposal	27
5.	When are Files Reinstated?	29
	a. Definition of a Reinstatement	29
	b. General Circumstances Prompting Reinstatement	29
	c. Policy Guidelines for Reinstatement	29
	d. Reinstatement Procedures	29
Chapter 4	Procedures for Sureties that are Defunct, in Rehabilitation, or in Liquidation	
1.	What are the Definitions of Each Status?	
	a. Defunct Surety	31
	b. Surety in Rehabilitation	31
	c. Surety in Liquidation	31
2.	What are the Claims Handling Procedures for Sureties that are Defunct, in Rehabilitation, or in Liquidation?	31
3.	What are the Reinstatement Policies for Contractors?	31
	a. Discharge of Debt	31
	b. Full Reimbursement of Loss by Principal	31
	c. Settlement Effected Prior to the Surety Company's Status Change	31
	d. Settlement Effected After the Surety Company's Status Change	32
Appendices		
1.	Index of Forms and Reports	33
2.	Sample Optional Form 23, Chargeout Record	35
3.	Sample SBA Form 912, Statement of Personal History	37
4.	Sample SBA Form 994, Application for Surety Bond Guarantee Assistance	39
5.	Sample SBA Form 994B, Surety Bond Guarantee Underwriting Review	41
6.	Sample SBA Form 994C, Surety Bond Guarantee Review Update	45

7.	Sample SBA Form 994F, Schedule of Uncompleted Work	47
8.	Sample SBA Form 990, Surety Bond Guarantee Agreement	49
9.	Sample SBA Form 991, Surety Bond Guarantee Agreement Addendum	51
10.	Sample SBA Form 1624, Certification, Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction	53
11.	Sample SBA Form 1261, Statements Required by Law and Executive Orders	55
12.	Sample SBA Form 994H, Default Report, Claims for Reimbursement and Record of Administrative Action	59
13.	Sample of the Closing Summary Review Sheet	61
14.	Sample of a Reinstatement Letter	63
	Glossary	65
	References	75

## **Chapter 1**

### **General Overview of Surety Bond Guarantee Program**

#### **1. What is the General Scope and Purpose of this SOP**

This SOP describes policy and procedures for handling defaults, claims, and recoveries resulting from surety bond guarantees issued by the Small Business Administration (SBA).

#### **2. What is the Program's Statutory Basis?**

The Small Business Investment Act of 1958, as amended, empowers SBA to guarantee the reimbursement of a surety participating in the Surety Bond Guarantee (SBG) Program for up to a specified percentage of their losses incurred and paid as a result of the contractor's breach of the terms of a guaranteed bid bond, payment bond, performance bond(s). Contracts eligible for SBA's guarantee cannot initially exceed \$1,250,000 in face value. Chapter 13, Part 115 of the Code of Federal Regulations (13 CFR 115) provides regulatory guidelines and provisions for the SBG Program.

#### **3. What are the Program Objectives?**

The primary objective is to enable small contractors to obtain bonds for contracts requiring them, which they could not obtain from a surety without an SBA guarantee. A secondary objective is to assist small and emerging contractors to become more bondable in their own right.

#### **4. What is the Program's Authority?**

##### **a. Headquarters Office**

The Office of Surety Guarantees (OSG) has authority for overview and control of SBG-related activities. Its primary claims function is to minimize SBA's losses and maximize recoveries by:

- (1) Reviewing and approving, or denying claims for reimbursement under the guarantee;
- (2) Establishing SBA loss reserves;
- (3) Determining whether cancellation or denial of SBA liability is warranted under the guarantee;



- (4) Conducting on-site reviews of underwriting, claims, and subrogation practices; and
- (5) Establishing procedures for ensuring that SBA receives its share of any surety recovery.

b. Area Offices

The various area SBG offices support OSG staff in efforts to minimize SBA's losses by informing SBA Headquarters of potential problems with contracts that have an SBA guaranteed bond. The area offices are also responsible for maintaining contact with district offices where 8(a) contractors or contractors with SBA loans have secured bonding with SBA's guarantee.

c. Surety Companies

Participating sureties are required to take all reasonable actions necessary to minimize loss and pursue recovery on any defaulted bond in which the surety seeks reimbursement of its losses and/or expenses.

SBA's direct contractual relationship is with the participating surety company, and not with the individual contractor.

## Chapter 2

### Claim for Reimbursement Procedures

#### 1. When Does the Surety Notify the SBA of a Claim Situation?

A surety must notify OSG's Claims and Recovery Division (CRD) and the appropriate area office in writing either at the time the surety applies for a guarantee on behalf of an affected principal, or within 30 days of the date the surety acquires knowledge, or should have acquired knowledge, whichever comes first, of any of the following events:

- a. Legal action is initiated under of the bond;
- b. The Oblige declares the Principal to be in default of the Contract;
- c. The surety establishes a claim reserve for the bond; or
- d. The surety receives any adverse information concerning the Principal's financial condition or possible inability to complete the project or to pay laborers, subcontractor, or suppliers.

#### 2. What is a "Rumble" Situation?

A surety must advise SBA that a claim has been made against the bond, but may indicate that the principal either intends to satisfy the claim or that the claim is being disputed. Generally, the surety sets a small reserve in these cases. Based on the reserve amount and if SBA anticipates that there will be no loss (i.e., collateral is posted, or claim paid), CRD will not request the case file from the area office at that time. This type of possible claim situation is referred to as a "rumble" CRD should fax a copy of the rumble notice to the respective area office immediately upon receipt. Respective area offices will in turn notify responsible SBA district offices on "rumble" cases pertaining to 8(a) contractors and contractors that have SBA loans.

#### 3. What is an "Imminent Breach?"

Imminent Breach is a threat to the successful completion of a bonded contract that, unless remedied by the surety, makes a default under the bond inevitable. In order for the SBA to reimburse a surety for payments made under Imminent Breach, the surety must submit a written request for SBA's approval prior to the surety's payment(s) to the contractor. The request includes the circumstances of the Imminent Breach, the reasons why the surety believes the contractor can complete the contract and the amount of funds needed to cure the breach.

#### 4. How Does CRD Handle Imminent Breach Requests?

- a. Once SBA receives an Imminent Breach request, CRD should notify the appropriate area office to request the file temporarily for review. Please remember that the **contractor is not in default**. CRD will review the case file with emphasis on current work in progress; **the contractor's ability to repay the surety**; amount of claims received; and the nature and extent of work to be completed.
- b. CRD will provide a brief summary of the case with recommendations on whether SBA should reimburse the surety for imminent breach payments to the Associate Administrator (AA)/OSG to approve or decline. If SBA agrees to reimburse the surety for imminent breach, CRD must enter the imminent breach information into the computer. This will set-up a computerized file so that SBA can reimburse the surety and monitor repayment activity. (See Claims & Recovery System User's Manual for all data input instructions.)

## 5. When Does CRD Request a Contractor's File?

- a. CRD will request the contractor's file from the area office when the surety has advised SBA that a claim reserve has been established for at least \$1,000.00 or more. All underwriting files for participating contractors are located in the appropriate area office in the field.
- b. Since the same contractor could have multiple guarantees, it is important to determine if the file is already in CRD. Check the computerized file tracking system to see if the file was previously forwarded to the CRD. Most default notifications refer to a specific bond, claim and surety bond guarantee number to make it easier to identify a specific project.

## 6. How Does CRD Request a Contractor's File?

CRD requests contractor's file by contacting the appropriate area office via e-mail or faxed memo signed by an SBG specialist or supervisor. The area offices should respond to a request for files within 3 workdays. Any delays in receiving requested files should be reported to the supervisor immediately.

## 7. What Happens to the File Once it is Received?

Once OSG receives the file(s) from the respective area office, the Office Automation Assistant (OAA) will enter the principal's name, SBG number, and the date received into the computerized file tracking system. The OAA will prepare a file label containing the principal's name and the first nine digits of the **old SBG number** or the contractor's Employer Identification Number (EIN) or the contractor's Social Security Number (SSN) whichever is applicable as part of the **new SBG number**. An Optional Form 23, "Chargeout Record," (Appendix 2) is also prepared, with the same information. Remove the Optional 23 each time the file is removed from the file room and place it in the

chargeout box in the file room.

## **8. What Happens When CRD Cannot Locate a File?**

If an original file cannot be located within 2 weeks, the OAA may prepare a “dummy” file.

A “dummy” file is a temporary file that is used to process reimbursement requests until the original file is found. The dummy file contains a complete set of computer printouts of all underwriting and claims activity to-date. When the original file is located, CRD will transfer all of the materials from the dummy file to the original file.

## **9. How is the Claim File Organized?**

CRD maintains information on bond guarantees that are in a “claims” status separate from the bond guarantees that are **not** in claims status in chronological order within the case file. The following documents are placed together in a separate part of the file for claim and recovery related activity:

- a. Current correspondence;
- b. Status Report(s);
- c. Initial Default Notification(s);
- d. SBA Forms;
- e. Bonds;
- f. Contracts;
- g. Copy of Bonding Line(s); and
- h. Other related underwriting and claim information.

## **10. How Does a Surety Inform SBA of Claim and Recovery Activity?**

- a. The CRD uses status reports from participating surety companies to monitor a surety’s claims and recovery activity on defaulted bond guarantees. Status reports must include the project’s completion status, remaining contract balances, performance and payment bond activities, surety’s indemnity efforts, and the surety’s claim reserve. This information is also used to adjust SBA’s share of the surety’s reserves and to update the computer database.
- b. At the time of the initial status report, much of the information may not be available to the surety; therefore, SBA requires the surety to submit semiannual status reports on each claim beginning 6 months after the initial notice, and then every 6 months

thereafter. The surety must notify SBA immediately of any substantial changes in the status of the claim or the amount of loss reserves.

## **11. What is a Claim Status Code?**

Based on the status report(s) received from the surety company, CRD places the file into an appropriate default status in the computer database. The following is a list of the possible categories and descriptions.

- a. Claim Status "1": This is an "Active" status used to establish the case in claims when the surety indicates that there is contingent liability and that claims for reimbursement will be forthcoming.
- b. Claim Status "2": This is a "Closed-No Loss" status used after SBA has received full recovery from the surety for its claims for reimbursement paid by SBA; or when no payment was made by the surety or SBA after contractor was placed in a claim status.
- c. Claim Status "3": This is a "Closed-to-Subrogation" status used when the project has been completed and all outstanding claims have been paid by the surety and recovery is being pursued from the indemnitor(s), and/or the obligee (contract retainage).
- d. Claim Status "4": This is a "Closed-Final" status that is used only after the surety has exhausted all reasonable recovery efforts and has receives SBA's approval to cease further pursuit of recovery.
- e. Claim Status "5": This is a "Settlement" status that is used when the surety has executed an agreement with the principal/indemnitor for less than the actual losses and/or expenses paid on behalf of the principal/indemnitor. The surety must obtain SBA's concurrence before entering into any settlement agreement.

## **12. How Does CRD Analyze the Contractor File?**

- a. CRD examines the financial, business, underwriting, and default/claim information for bond guarantees in default to verify compliance with regulatory provisions. The file analysis checklist is a helpful guide to organize and review the file materials that are often extensive.
- b. A review of the financial, business, and underwriting information is the first step in analyzing the claims file. Examine the following underwriting forms to determine that the guarantee was executed in accordance with the regulations and provisions of the SBG program.
  - (1) SBA Form 912, "Statement of Personal History," (Appendix 3). Review for character and reputation eligibility requirements. See 13 CFR 115.13 to determine who is required to submit this form.

- (2) General Indemnity Agreement (GIA) Make certain this is signed by the principal(s) and indemnitor(s), and notarized by an authorized person(s). It must be applicable to the surety that appears on the bonds and the SBA guarantee agreement.
- (3) SBA Form 994, "Application for Surety Bond Guarantee Assistance," (Appendix 4), contains pertinent information about the company's gross annual receipts, the project, its location, starting and completion dates, contract amount, penalty clause, and the principal's experience with other SBA programs. It also includes information on the principal's minority status, which may affect the guarantee percentage.
- (4) SBA Form 994B/C, "Surety Bond Guarantee Underwriting Review/Review Update," (Appendix 5/Appendix 6), contains extensive information about the principal's financial status, prior work experience, and current contract. Compare this information to material found elsewhere in the file to verify its consistency and accuracy.
- (5) SBA Form 994F, "Schedule of Uncompleted Work," (Appendix 7), contains a listing of all of the contractor's uncompleted work (bonded and unbonded) at the time the guarantee was issued, including the subcontractor's uncompleted work.
- (6) SBA Form 990, "Surety Bond Guarantee Agreement," (Appendix 8), is SBA's commitment to guarantee bonds which were issued by the surety. Check both the surety and SBA representatives' signatures to verify that these persons were authorized to execute the SBA 990. There should be a power-of-attorney (POA) in the file matching the signature for the surety on the SBA 990. SOP 50 45 Chapter 1, "General Overview of the Surety Bond Guarantee Program," should be used to verify the delegated authority of the SBA signature on the SBA 990.
- (7) SBA Form 991, "Surety Bond Guarantee Agreement Addendum," (Appendix 9), is used when **work under the contract has started prior to the surety receiving SBA's guarantee** to provide evidence from the principal that the surety bond requirements was contained in the original contract and to provide sufficient documentation as to why the surety bond was not previously secured. The SBA 991 also provides certification that all subcontractors and suppliers were paid before the SBA 991 is approved. It is important that the percentage of guarantee on the SBA 990 is correct, based on the contract amount and program regulations.
- (8) SBA Form 1624, "Certification, Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transaction," (Appendix 10), is the certification required by Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The case file must contain SBA 1624 for each project submission.

- (9) SBA Form 1261, "Statements Required by Law and Executive Orders," (Appendix 11), make sure that a copy of this form is in the contractors case file.
- (10) Financial/Business Data, is reviewed to determine if principal met program eligibility requirements for the SBG Program, at the time of the guarantee.
- c. CRD must thoroughly review the applicable bond(s), bonded contract, bid solicitation, and contract award letter to verify that the bonds were required, that the contract amount is the same on the SBA 990, that the contract amount was within statutory limits, and that the project was eligible for the SBG Program. (Refer to SOP 50 45, "Surety Bond Guarantee Program," for more details.)
- d. CRD must also review the default notification, and current status reports to ascertain the following information:
- (1) A description of the claim(s) filed against the bond;
  - (2) The status of the project and completion arrangements;
  - (3) Remaining contract funds;
  - (4) Surety's plan for settling or defending the claim(s);
  - (5) The anticipated loss plus reserve amounts; and
  - (6) Other information that is pertinent to the claim.
- e. CRD will request clarification from surety on any discrepancy or inconsistency in information provided in the status reports and case files. Once the analysis is completed and CRD determines that payment can be made under its guarantee, the contractor is placed in default status in the SBG computer.
- f. CRD will prepare written referrals to the AA/OSG, on poorly underwritten cases, abnormalities, or apparent non-compliance with the terms and conditions of the SBA 990. The referral must include a recommendation for further actions by the Agency.
- g. Listed below are a few situations that would require a written referral:
- (1) Work began prior to obtaining SBA's Guarantee;
  - (2) Original contract amount exceeds statutory limit;
  - (3) Financial Guarantees;
  - (4) Surety's failure to obtain a GIA;

- (5) Bond(s) amount exceeds contract amount;
- (6) Surety did not notify SBA timely of possible default/claims;
- (7) Surety's negligence in handling losses;
- (8) Surety's Material misrepresentation; and
- (9) Any bond or contract that appears ineligible due to substantial regulatory violation.

### 13. What Happens When a Bid Bond Default Occurs?

- a. A bid bond default occurs when the surety will not issue the final bonds or when the contractor refuses to enter the contract after notification of proposed award. To process a claim under the bid bond, SBA must receive the following information:
  - (1) A copy of the demand letter from the obligee;
  - (2) A copy of the lawsuit (if applicable);
  - (3) A copy of the bid bond; and
  - (4) A copy of the contract.
- b. CRD must receive a copy of the bonding line, in addition to the bid bond, lawsuit, or demand letter from the obligee when no SBA 990 exists for a bid bond guarantee executed under a bonding line. The surety must prepare a SBA 990, which must be signed by the area office surety bond guarantee personnel with the appropriate delegated authority. **This action does not constitute a new guarantee**; it is used only to document a previous commitment under a bonding line. Carefully review information pertaining to the bid bond default to see if the bid bond was issued after the contract was awarded and/or the job had started.

### 14. How Does the Surety Request Reimbursement from SBA?

A surety can request reimbursement by submitting SBA Form 994H, "Default Report, Claim for Reimbursement, a Record of Administrative Record," (Appendix 12). The surety can also use a previously approved substitute form that contains all the information identical to the SBA 994H, including the "verbatim" certification.



## 15. How Does CRD Process Claims for Reimbursement Requests?

CRD checks the SBA 994H, for “original” signature by an authorized representative and date on the certification portion of the form. The following items are reviewed in detail.

### a. Initial Payment

- (1) Review the SBA 994H or its substitute, to ensure that the information corresponds with information in the case file.
- (2) Check the SBA 990, to determine the following.
  - (a) Approval signature of SBA official is within appropriate authority.
  - (b) For all guarantees approved on or after May 8, 1989, the guarantee percentage is:
    - (i) 80 percent for contracts more than \$100,000;
    - (ii) 90 percent for contracts up to and including \$100,000; and
    - (iii) 90 percent for all contracts awarded to firms owned and controlled by socially and economically disadvantaged individuals.
  - (c) A deductible applies on guarantees issued prior to November 28, 1988. SBA’s guaranteed share does not start until the surety has paid the lesser of the first \$500.00 or the amount of the bond premium as reduced by the guarantee percentage. The correct deductible is determined by multiplying 80 percent of the premium charged up to \$500.00, whichever is less.
  - (d) Correct name of the surety - When there are two sureties (co-sureties) named on the SBA 990, the lead surety is specified. All transactions with SBA will be done through the lead surety.
- (3) Page two (2) of the SBA 994H provides a list of itemized disbursements by date, draft number, payee, and amount, any recovery received and the loss summary. Documentation to support the itemizations on all attorney and/or consultant fees must accompany the SBA 994H. CRD must enter all of the SBA 994H information into the computer. Once the information is entered the computer will calculate the appropriate payment amount or amount due the SBA.

<u>Example #1:</u>	Surety's Total Loss Disbursements	\$3369.36
	(Less Recovery if applicable)	<u>-1000.00</u>
	<b>Subtotal</b>	<b>2,269.36</b>
	(Less Deductible, if applicable)	<u>-500.00</u>
	<b>Reimbursable Loss</b>	<b>1,769.36</b>

Reimbursable Loss	\$1,769.36
SBA percent Guarantee (80 or 90 percent)	<u>x .90</u>
<b>SBA's Share of Loss</b>	<b>1,592.42</b>

SBA's Share of Loss	\$1,592.42
Less Previous SBA Payments	0.00
<b>Amount Due Surety From SBA</b>	<b>\$1,592.42</b>

- (4) CRD staff with the appropriate delegated authority must review and approve the SBA 994H in the computer.

b. Subsequent Payments

- (1) The same procedures are used for the subsequent payment as were for the initial payments. However, it is important that CRD review the itemizations more closely for any disbursement duplications from prior requests. All items that have been previously reimbursed are considered duplicates and are disallowed from the itemized total amount. Notate disallowances(s) on the SBA 994H and notify the surety of the disallowance(s) and advise the surety of the corrected amount to be paid.
- (2) Request and review current status reports with sufficient loss reserves. If the validity of the claim for reimbursement or justification for payment appears to be questionable, refer the file to the supervisor for appropriate action.

An example of how the computer will calculate a subsequent payment is as follows:

<u>Example #2:</u>	Current Losses Reported	\$2,151.10
	Losses Previously Reported	3,369.36
	<b>Total Surety Loss</b>	<b>5,520.46</b>
	Surety Loss	\$5,520.46
	(Less Recovery: Current if applicable)	0.00
	(Less Recovery: Previously Reported)	<u>-1,000.00</u>
	<b>Total Surety Net Loss</b>	<b>4,420.46</b>

Subtotal	\$4,420.46
Less Deductible (If applicable)	<u>-500.00</u>
Reimbursable Loss	3,920.46
Reimbursable Loss	\$3,920.46
SBA% Guarantee (80 percent or 90 percent)	<u>x .90</u>
SBA's Share of Loss	<b>3,528.41</b>
SBA's Share of Loss	\$3,528.41
(Less Previous SBA Payments)	<u>-1,592.42</u>
Amount Due Surety From SBA	<b>\$1,935.99</b>

c. Trust Accounts

- (1) A surety may choose to complete a defaulted project. When this occurs, the surety may establish a trust account from which expenses are paid.
- (2) Monies deposited into the trust account, but not actually disbursed, are not reimbursable by SBA. The deposit(s) is reported to OSG as part of the surety's total loss disbursements on the SBA 994H. If no payments are made from the trust account, the deposit(s) becomes the undisbursed trust account balance.
- (3) Although no loss disbursements appear on the SBA 994H, payments are made to the surety on the trust account as the trust account balance decreases.
- (4) To determine the reimbursable amount, subtract the undisbursed trust account balance from the surety's total loss disbursements. A separate accounting of the trust account transactions must be submitted by the surety. Any trust account disbursements unaccounted for must be included in the undisbursed trust account balance entered on the SBA 994H.

d. Distribution of Approved SBA 994Hs

After the SBA 994Hs have been approved for payment in the computer, CRD will file the SBA 994Hs into the contractor files under the appropriate project suffix number.

**16. How are Delays in Reimbursements to Sureties Prevented?**

- a. SBA is required to reimburse surety companies within 90 days of receipt of their payment request in accordance with 13 CFR 115.35. To help expedite the payment process, CRD requires the sureties to provide the following items with the initial

claims for reimbursement:

- (1) Initial Default Notification;
  - (2) Copy of the Contract for which the bonds were issued;
  - (3) An executed copy of the appropriate contract bonds (bid, payment, and/or performance);
  - (4) An executed copy of the SBA 990;
  - (5) The General Indemnity Agreement;
  - (6) Documentation for all fees and expenses;
  - (7) An original signature and date of execution;
  - (8) A narrative status report that includes percentage of completion, contract balance, cost to complete, appropriate reserve, and details regarding the claim situation; and
  - (9) A Copy of the Agent's power of attorney.
- b. However, when additional information is still needed on a claim payment, CRD can disallow the questionable amount pending receipt of the information; unless, the requested information pertains to the entire claim. If the requested information pertains to the entire amount of the claim, return the reimbursement request to the surety with an explanation.

## **17. How Does CRD Track Missing Payments?**

If a surety informs SBA that they have not received their check or electronic deposit, CRD must contact SBA's Denver Finance Center (DFC) in Denver, CO, immediately for assistance. DFC will need the SBG number, the surety name, the payment amount, and the approval date.

## **18. Can CRD Release Information Contained in Case Files?**

- a. Public access to information contained in SBA case files is governed by provisions established by the Freedom of Information Act and Privacy Act. It is essential that you recognize the importance of compliance with the policies and procedures governing public access to files, records, and documents of SBA.
- b. Disclosure of information in an unofficial manner may compromise SBA's position, increase vulnerability of the Agency, and result in legal action against both SBA and

the employee responsible for the release of the material.

- c. Prepare your responses to requests for information from case files according to the procedures found in SOP 40 03, "Disclosure of Information," and 13 CFR 102, "Record Disclosure and Privacy."
- d. If SBA receives a subpoena and/or court order from a Court for a file in claims, you should notify the AA/OSG and the Office of General Counsel (OGC) immediately. Make sure that you complete a file release form and notate the file charge-out card accordingly. Under no circumstances should you release a case file from OSG without notifying the AA/OSG.

## Chapter 3

### Subrogation and Recovery Procedures

#### 1. How Does CRD Handle Subrogation Activities?

##### a. Conditions Necessary to Transfer a Claim File on a Bond Guarantee to Subrogation/Recovery Status

CRD will place the file into a “Closed-to-Subrogation” status (Claim Status “3”) in the computer when the surety advises SBA that the project has been completed, all claims payments have been made, no further contingent liability remains, and recovery is being actively pursued from the principal, indemnitors, and obligee. CRD then monitors surety’s recovery efforts through regular status reports.

##### b. Status Reports

- (1) CRD uses status reports from sureties to monitor recovery and to check the expenses anticipated relative to recovery efforts. These reports are received semi-annually; however, if significant changes occur in recovery activity, the surety must advise SBA immediately. CRD can also request additional information at any time, if necessary. CRD compares information contained in the current status report to that in previous status reports, as well as to other information in the file to check for consistency, accuracy, and to verify that the surety is taking all steps necessary to minimize the loss and is pursuing all possible sources of recovery.
- (2) As part of a status update, a surety may advise SBA that a payment plan has been established for a defaulted contractor. CRD must request a copy of the repayment plan to monitor receipt of SBA’s share for monies received by the surety.
- (3) CRD also monitors actual and anticipated legal fees and costs associated with the surety's subrogation efforts. Refer any abnormalities or apparent non-compliance with the terms and conditions of the SBA 990 in writing to the AA/OSG, through the appropriate supervisor, with a recommendation for appropriate action

##### c. Sources of Recovery and Related Documentation

The following is a list of recovery documentation that is required for SBA’s review:

- (1) GIA: This is an agreement signed by an individual or entity holding the

surety harmless from any loss or exposure incurred on a bond that it issues. The signatures on this form determine who the surety holds liable and what assets may be pursued by the surety.

- (2) Investigative Reports: Two of the most common investigative reports are the Equifax and the Dun and Bradstreet. Both are used to locate the indemnitors and ascertain what assets are available for indemnity pursuit.
- (3) Financial Statements and Reports: These reports outline the assets and liabilities of the individual indemnitors or the principal corporation at a given point in time. Current financial statements should be compared to those that were submitted with the underwriting package. Question any discrepancies.
  - (a) Corporate Assets
    - Real Estate
    - Machinery and Equipment
    - Accounts Receivable
    - Supplies and materials
  - (b) Personal Assets
    - Residence (In many states, subject to Homestead Acts)
    - Land and Real Estate
    - Bank Accounts/Stocks and Bonds
    - Insurance Policies
    - Luxury Items (Jewelry, automobile, boats, etc. Check with the Department of Motor Vehicles for registration)
- (4) Letters of Credit: Issued by banks, these are sometimes required by the surety as collateral at the time that the bond was underwritten. If a default occurs, this can be pursued as recovery.
- (5) Discharge in Bankruptcy: This may be requested from the surety as documentation of the actual parties to the bankruptcy and the date of discharge, as well as the type of bankruptcy.
- (6) Judgment: A copy of the judgment against the principal and/or indemnitors is requested from the surety to clarify the details of the judgment.
- (7) Accounting of Contract Funds: Since the contract funds remaining on a defaulted project may represent a substantial amount of recovery, a complete accounting is requested if an apparent discrepancy exists in the figures.

## 2. When are Funds Due SBA?

A “Due SBA” occurs when the surety’s reimbursable loss amount is less than SBA’s paid amount. SBA is entitled to its guaranteed percentage of all salvage and recovery obtained on behalf of the defaulted principal. The surety must reimburse or credit SBA its guaranteed share within 90 days of receipt. A “Due SBA” can also occur when an SBA overpayment was made to the surety by SBA for an over billing resulting in a refund to the Agency. Recovery and refund checks are to be sent directly from the surety to DFC at the following address:

U.S. Small Business Administration  
 Denver Finance Center  
 P.O. Box 490  
 Denver, Colorado 80201-0490

If the surety sends recovery checks to Headquarters instead of DFC, the following procedures are to be used:

### a. Incoming Check(s) Procedures

- (1) Date stamp all incoming related correspondence.
- (2) Check the case file for the appropriate SBG number.
- (3) Type the SBG number on the lower left corner of the check. If the check pertains to several SBG numbers, itemize under each SBG number the proportionate amount to each bond.
- (4) Write the date that the check was sent to Denver and indicate the preparer's initials on all related correspondence.
- (5) Make three copies of the check and the related correspondence and distribute as follows: a copy with the computer printout attached for the chron file; a copy for the subject file; and a copy for the diary file.
- (6) Prepare a route slip with applicable SBG numbers and allotted amounts; the total number of checks enclosed; and the date that the checks are forwarded to DFC in Denver, CO.
- (7) Place the check(s) and route slip in an envelope addressed to DFC and put it in the Denver overnight box in the Office of the Chief Financial Officer (CFO).
- (8) Diary the file for at least 30 days. At that time, follow the “Due SBA”



procedures described in the next section.

- (9) Send a letter to the surety advising them of the correct mailing address for recovery checks.

b. Due SBA Procedures

"Due SBAs" are submitted on SBA 994H, "Claim for Reimbursement." CRD uses the following steps to process a "Due SBA."

- (1) Check the trade name and the SBG number on the "Due SBA" to make sure that the name and number corresponds to the correct contractor file, and to bond and claim number(s) on previous correspondence.
- (2) Check the figures on the SBA 994H using the same procedures described in Chapter 2, "Claim for Reimbursement Procedures." The SBA 994H may indicate that the surety's recovery was offset by the loss paid.
- (3) If the surety's calculation and the amount due to SBA are incorrect, notify the surety of the discrepancies and diary the file for follow-up.
- (4) Check the "Accounting Transactions" screen in the computer for the appropriate SBG number to determine if SBA has received its share of the recovery funds.
- (5) If the recovery monies have been received and are indicated in the computer, notate this in the file.

c. Recovery Not Received by SBA

If a period of 90 calendar days has passed since the receipt of the "Due SBA" and there is no indication that the recovery monies have been credited to the appropriate bond, CRD will proceed as follows.

- (1) Call DFC to verify receipt of the check(s) from the surety.
- (2) If the check has not been received by DFC, contact the surety to verify that the check was sent. If the check has not been sent, request remittance from the surety in writing.
- (3) Diary a copy of the letter for approximately 2 weeks and follow-up at that time.
- (4) A surety's failure to remit recovery monies to SBA within 3 months (90 days) should be reported in writing to the supervisor for further action.

d. Recovery Applied to an Incorrect SBG Number

If recovery monies have been applied to an incorrect bond, the computer database records must be adjusted. Contact SBA's DFC in Denver, CO and the Office of Chief Information Officer (OCIO) in Headquarters with the correct information for assistance.

e. Refund of Recovery Money

Request a SBA 994H from the surety to process a refund due the surety for overpayments of SBA's share of the recovery. Once CRD receives the information and agrees with the refund, contact OCIO for assistance in correcting the computer information.

**3. What are the Procedures for Placing a File in "Closing Final" Status?**

A surety must obtain SBA's written consent to discontinue subrogation efforts, when further indemnity pursuit is considered economically unfeasible or when the indemnitor(s) have been discharged in bankruptcy. CRD must take the following steps to complete the closing process.

a. File Review

- (1) CRD must review the case file for each defaulted bond guarantee listed in the surety's request. Request the financial background information on each respective indemnitor to verify that it is no longer feasible to continue indemnity pursuit. Make sure that final reimbursement has been made.
- (2) Request that the surety strongly consider the use of a collection agency versus attorneys on further indemnity actions if it appears that it is feasible and economically beneficial to continue indemnity pursuit.
- (3) If the indemnitor(s) have been discharged in bankruptcy, the case file must contain a copy of the Bankruptcy Discharge. Make sure that the indemnitor(s) listed on the GIA are listed on the Discharge.

b. Closing Process

- (1) Usually the final request for reimbursement is submitted with the closing status report. If it is not received with the surety's request to close, maintain the file in the "Closed to Subrogation" status until the final billing is received. Disbursements over a year old must be accompanied by supporting documentation. Once the final payment request and any applicable documentation have been received, place the specific bond guarantee into a

“Closed Final” status in the computer.

- (2) Complete a "Closing Summary Sheet" (Appendix 13) when the entire file is being closed. Include a brief summary of the surety's subrogation attempts on each defaulted project in the closing request, reasons for closing the file, and CRD's recommendations concerning the surety's request to discontinue subrogation efforts. Submit this summary to the supervisor for approval to close the file. Once approval is received, prepare a letter to the surety for the supervisor's signature.
- (3) Update the computer and the file tracking system with the closing information.

c. Disposition of a Closed-Final File

- (1) When the entire file is being closed, place a note on the outside of the folder instructing the OAA to close the file.
- (2) The OAA will notate the file chargeout record and update the computer file tracking system that the file is “Closed-Final.”
- (3) The OAA forwards the file to the warehouse for storage and enters the appropriate storage box number into the computer.
- (4) A listing of the closed-final files is maintained by the OAA.

#### 4. What is an Indemnity Settlement?

a. Definition of a Settlement

A settlement occurs when a defaulted contractor and its surety agree upon an amount **less than** the total loss amount that will satisfy the contractor's indebtedness to the surety. SBA must concur, in writing, to a surety's recommendations regarding the settlement offer before the settlement can be finalized. Once the settlement has been executed, surety must submit SBA's guaranteed share of such amount within 90 days of receipt. (For details on submitting payments to SBA, see Paragraph 3-2, “When are Funds Due SBA?”)

b. Types of Settlements

- (1) **Settlement (Immediate Payment of SBA's Pro Rata Share of Recovery)** - The surety settled its claim with the indemnitor(s) for an amount less than the surety's total loss with terms accepted by OSG.
- (2) **Settlement (Delayed Payment of Settlement Adequately Assured)** - The contractor has paid the surety a portion of the settlement amount and the

surety has taken firm collateral from the contractor for the balance of the settlement amount. CRD must obtain a copy of the collateral and SBA's share of the partial payment from the surety. In some cases, a surety may wish to reinstate the contractor so that money can be made to help pay off the settlement. Prior to reinstating the file, the surety must receive at least 50 percent of the settlement amount.

- (3) **Contested Claim (Scheduled Court Appearance)** - The contractor has been presented with a claim which it contests in court. The contractor posts collateral with the surety in the amount of the possible loss from the claim, including legal and administrative fees reimbursed to the surety by SBA. The surety sends SBA a copy of the draft, money order, or collateral document plus confirmation that there are no other claims outstanding on this or any other SBA-guaranteed bond involving this contractor.

c. Policy Guidelines for Settlements

Under the terms and conditions of SBA 990, the authority to act upon proposed settlement offers in connection with defaulted surety bonds lies with the surety and not SBA. The contractor's contractual relationship is with the surety company; therefore, all matters pertaining to settlement and reinstatement must be arranged with and through the surety. **SBA is not a party to the contractual relationship between the contractor and the surety. Since SBA's direct contractual relationship is with the surety company only, SBA will neither negotiate nor discuss with the contractor amounts owed to the surety by the contractor or settlement of such debts.** However, the surety must obtain SBA's concurrence to terms negotiated by the surety before entering into a settlement agreement.

d. Procedures Used to Review a Settlement Proposal

CRD takes the following steps to review a surety's recommendation for indemnity settlement.

- (1) Checks SBA's payment amount for **all** defaulted projects (including projects with other sureties) to determine SBA's total net loss on all projects.
- (2) Determines which defaulted projects are involved in the settlement proposal.
- (3) Reviews the facts outlined in the settlement letter and the details of any telephone conversations with the surety representative.
- (4) Reviews the following information in the file.
  - (a) GIA - Make sure that all of the indemnitors are accounted for in the surety settlement proposal. If not, request information regarding what recovery

actions have been taken against the indemnitor(s) in question.

- (b) Status Reports, Financial Statements (including tax returns) - ascertain the financial status of the indemnitors.
- (c) Investigative Reports (credit, asset reports, etc.) - Further evaluate the financial status of the indemnitors.
- (d) If clarification of questionable items or supporting documentation is needed, contact the surety for additional information.
- (e) Compare the total net loss figure with the total amount of the settlement being offered. Consider whether the settlement offer is reasonable compared to the total loss amount.
- (f) Prepare a written summarization of the facts of the case, including any pertinent recommendations concerning the settlement proposal. Explain any agreement or disagreement with the settlement offer.
- (g) Submit recommendations to the AA/OSG, with concurrences from your supervisor and the DAA/OSG, for approval.
- (h) Advise the surety of SBA's recommendation concerning the settlement offer. This response may be in the form of a telephone call or a letter, depending upon the urgency of the situation. If the response is by phone, prepare a letter of confirmation no later than the next business day. The letter should outline the settlement terms as submitted to SBA.
- (i) If the settlement proposal is not satisfactory to SBA, CRD should advise the surety and ask it to re-negotiate the settlement terms.
- (j) Request a follow-up letter from the surety representative outlining the settlement terms and the final outcome. If the settlement is executed, CRD must request a copy of the executed agreement and SBA's share of monies received.
- (k) Upon receipt of this follow-up letter, diary a copy for an appropriate period of time. At that time, check the file and computer to be sure that the recovery monies have been received.

## 5. When are Files Reinstated?

### a. Definition of a Reinstatement

A reinstatement occurs when the principal becomes eligible for further surety bond guarantees and his/her file is returned to the appropriate area office for underwriting consideration.

### b. General Circumstances Prompting Reinstatement

Circumstances prompting reinstatement of a contractor's case file to the appropriate area office for future bonding include the following.

- (1) A settlement agreement has been executed between the surety and the principal and/or indemnitor(s) and SBA has been appropriately satisfied. See paragraph 3-4 of this SOP for the specific types of settlements.
- (2) Closed-No Loss (SBA Completely Reimbursed). The contractor has satisfied the surety's losses and the surety has repaid SBA in full.
- (3) Closed-No Loss (Balance of SBA Loss Adequately Secured). The surety has repaid SBA at least one-half of SBA's loss and has obtained a promissory note from the contractor to pay the balance, or has obtained collateral of equal value. Reinstatement the file as a Closed-No Loss.
- (4) The contractor's indebtedness to the surety is discharged by operation of law (e.g., bankruptcy discharge.)

### c. Policy Guidelines for Reinstatement

As a result of the contractual relationships established by the SBA 990, the surety is the only party that may request reinstatement of a principal's file (except for bankruptcy). A principal whose debt has been expunged through bankruptcy may request that their claims file be reinstated for underwriting consideration. Often OSG and area office staffs are contacted by the principal, the principal's attorney, or the principal's current agent regarding future bonding. In these instances, SBA personnel may act as a liaison between the surety and the principal and encourage repayment negotiations between the two parties. The surety must then notify OSG when the principal has resolved his/her claim obligations so that reinstatement procedures can be initiated.

### d. Reinstatement Procedures

CRD takes the following steps to reinstate a file.

- (1) Retrieve the file and print a copy of the appropriate claims computer screens.
- (2) If the file was previously closed-final and sent to storage, request that the records center return it to OSG. Inform the area office that the file has been requested and that the reinstatement will be processed upon its receipt.
- (3) If a settlement has been approved, check the net loss figure, recovery total, and default status, and review the file to ascertain that the terms of the settlement have been satisfied.
- (4) Update the computer database records to reflect the reinstatement or closing status.
- (5) Prepare a reinstatement letter (appendix 13) and submit it to the supervisor for approval.
- (6) After the reinstatement has been approved and the reinstatement letter signed, the following steps should be taken to return the file to the area office.
  - (a) Keep copies of the computer printout, the reinstatement letter, and documentation that supports the reinstatement for OSG's records. This information should be placed in the "reinstatement" folder under the appropriate area office. The reinstatement file is maintained by the OAA.
  - (b) The OAA will update the file tracking system and notate the Optional 23 chargeout record with the date of the reinstatement.
  - (c) Send the entire file with the reinstatement letter to the appropriate area office via mail or overnight express, depending upon the urgency of the matter.

## Chapter 4

### Procedures for Sureties that are Defunct, in Rehabilitation, or in Liquidation

#### 1. What are the Definitions of Each Status?

- a. Defunct Surety A defunct surety has ceased to function and no longer conducts business operations.
- b. Surety in Rehabilitation A surety in rehabilitation is under corporate reorganization of Chapter 11 of the Bankruptcy Act in an attempt to reinstate the surety to its former condition of successful operation and solvency.
- c. Surety in Liquidation A surety in liquidation is in the process of settling its financial affairs by reducing its assets to cash, discharging liabilities, and dividing surplus or loss. Liquidation may precede or follow dissolution, which is the end of the legal existence of a corporation.

#### 2. What are the Claims Handling Procedures for Sureties that are Defunct, in Rehabilitation, or in Liquidation?

If a surety becomes insolvent, all rights or benefits conferred on the surety under a valid and binding Prior Approval agreement will accrue only to the trustee or receiver of the surety. SBA will not be liable to the trustee or receiver of the insolvent surety except for the guaranteed portion of any loss incurred and actually paid by such surety or its trustee or receiver under the guaranteed bonds. The State Insurance Department where the surety is located becomes responsible for settling claims and handling all claims matters. Accordingly, the trustee or receiver must submit quarterly status reports accounting for all claims paid, all funds received and all settlements being considered. All correspondence concerning sureties that are defunct, in rehabilitation, or liquidation are referred to the supervisor for action. Refer to Chapter 2, "Claims For Reimbursement Procedures," of this SOP to process payment requests from insolvent sureties.

#### 3. What are the Reinstatement Policies for Contractors?

- a. Discharge of Debt The contractor's indebtedness to the surety is discharged by operation of law.
- b. Full Reimbursement of Loss by Principal The contractor's file may be reinstated if the principal has repaid the appropriate State insurance liquidator the full loss incurred by the surety, and valid evidence of repayment is received by SBA.
- c. Settlement Effected Prior to the Surety Company's Status Change If a settlement between the principal or principal's legal representative and the surety company was effected prior to the surety company's status change to defunct, rehabilitation, or liquidation, then the



amount and the terms of the settlement should stand as the duly renegotiated debt.

- d. Settlement Effected After the Surety Company's Status Changed A new settlement regarding a defaulted SBA-guaranteed bond may be effected between a principal and a State Insurance Department as liquidator, if the principal's surety is defunct, in rehabilitation, or in liquidation.

## Appendix 1

### Index of Forms and Reports

<u>Forms</u>	<u>Paragraph</u>
SBA Form 990, Surety Bond Guarantee Agreement	2-12
SBA Form 991, Surety Bond Agreement Addendum	2-12
SBA Form 994, Application for Surety Bond Guarantee Assistance	2-12
SBA Form 994B, Surety Bond Guarantee Underwriting Review	2-12
SBA Form 994C, Surety Bond Guarantee Review Update	2-12
SBA Form 994F, Schedule of Uncompleted Work	2-12
SBA Form 994H, Default Report, Claim for Reimbursement, and, Record of Administrative Action	2-12
SBA Form 1261, Statements Required by Law and Executive Orders	2-12
SBA Form 1624, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions	2-12
SBA Form, 912, Statement of Personal History	2-12
Optional Form 23, Chargeout Record	2-9
<u>Reports</u>	
Reserved	



**Appendix 2**  
**(paragraph 2-12)**  
**Sample of Optional Form 23, Chargeout Record**

**OUT**

IDENTIFICATION OF RECORD <small>NUMBER TITLE AND OR SUBJECT DATE OF FILE OR DOCUMENT</small>	CHARGED TO <small>(PERSON &amp; OFFICE)</small>	DATE CHARGED OUT
<small>OPTIONAL FORM 23 FEB 1992 GSA GEN. REG. NO. 259</small> <b>CHARGEOUT RECORD</b> <small>5023-101</small>		
<small>DATE CHARGED OUT</small>	<small>CHARGED TO PERSON &amp; OFFICE</small>	<small>IDENTIFICATION OF RECORD NUMBER TITLE AND OR SUBJECT DATE OF FILE OR DOCUMENT</small>

**OUT**



### Appendix 3 (paragraph 2-12) Sample of SBA Form 912, Statement of Personal History

Return Executed Copies 1, 2, and 3 to SBA

OMB APPROVAL NO 3245-0178  
Expiration Date: 7/31/2000

 <div style="text-align: center;"> <b>United States of America</b>  <b>SMALL BUSINESS ADMINISTRATION</b>  <b>STATEMENT OF PERSONAL HISTORY</b> </div>		<p style="text-align: center;"><b>Please Read Carefully - Print or Type</b></p> <p>Each member of the small business concern or the development company requesting assistance must submit this form in TRIPLICATE for filing with the SBA application. This form must be filled out and submitted by:</p> <ol style="list-style-type: none"> <li>1. If a sole proprietorship by the proprietor.</li> <li>2. If a partnership by each partner.</li> <li>3. If a corporation or a development company, by each officer, director, and additionally by each holder of 20% or more of the voting stock.</li> <li>4. Any other person including a hired manager, who has authority to speak for and commit the borrower in the management of the business.</li> </ol>			
Name and Address of Applicant (Firm Name)(Street, City, State, and ZIP Code)		SBA District/Disaster Area Office  <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;">Amount Applied for (when applicable)</td> <td style="width: 40%;">File No. (if known)</td> </tr> </table>		Amount Applied for (when applicable)	File No. (if known)
Amount Applied for (when applicable)	File No. (if known)				
1. Personal Statement of: (State name in full, if no middle name, state (NMN), or if initial only, indicate initial.) List all former names used, and dates each name was used. Use separate sheet if necessary.  <div style="display: flex; justify-content: space-between;"> <span>First</span> <span>Middle</span> <span>Last</span> </div>		Name and Address of participating lender or surety co. (when applicable and known)  2. Date of Birth (Month, day, and year)  3. Place of Birth: (City & State or Foreign Country)			
4. Give the percentage of ownership or stock owned or to be owned in the small business concern or the Development Company		Social Security No.  U.S. Citizen? <input type="checkbox"/> YES <input type="checkbox"/> NO If no, give alien registration number:			
5. Present residence address: From: To: Address:  Home Telephone No. (Include A/C): Business Telephone No. (Include A/C):		Most recent prior address (omit if over 10 years ago): From: To: Address:			
<p><b>IT IS AGAINST SBA'S POLICY TO PROVIDE ASSISTANCE TO PERSONS NOT OF GOOD CHARACTER; THEREFORE, CONSIDERATION IS GIVEN TO A PERSON'S BEHAVIOR, INTEGRITY, CANDOR, AND DISPOSITION TOWARD CRIMINAL ACTIONS. IT IS ALSO AGAINST SBA'S POLICY TO PROVIDE ASSISTANCE NOT IN THE BEST INTEREST OF THE UNITED STATES; FOR EXAMPLE, IF THERE IS REASON TO BELIEVE THE EFFECT OF SUCH ASSISTANCE WILL BE TO ENCOURAGE OR SUPPORT, DIRECTLY OR INDIRECTLY, ACTIVITIES HARMFUL TO THE SECURITY OF THE UNITED STATES.</b></p> <p><b>THEREFORE, IT IS IMPORTANT THAT THE NEXT THREE QUESTIONS BE ANSWERED TRUTHFULLY AND COMPLETELY. AN ARREST OR CONVICTION RECORD WILL NOT NECESSARILY DISQUALIFY YOU; HOWEVER, AN UNTRUTHFUL ANSWER WILL CAUSE YOUR APPLICATION TO BE DENIED.</b></p> <p><b>IF YOU ANSWER "YES" TO 6, 7, OR 8, FURNISH DETAILS IN A SEPARATE EXHIBIT. INCLUDE DATES, LOCATION, FINES, SENTENCES, WHETHER MISDEMEANOR OR FELONY, DATES OF PAROLE/PROBATION, UNPAID FINES OR PENALTIES, NAME(S) UNDER WHICH CHARGED, AND ANY OTHER PERTINENT INFORMATION.</b></p>					
6. Are you presently under indictment, on parole or probation? <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, indicate date parole or probation is to expire.)					
7. Have you ever been charged with and/or arrested for any criminal offense other than a minor motor vehicle violation? Include offenses which have been dismissed, discharged, or not prosecuted (All arrests and charges must be disclosed and explained on an attached sheet.) <input type="checkbox"/> Yes <input type="checkbox"/> No					
8. Have you ever been convicted, placed on pretrial diversion, or placed on any form of probation, including adjudication withheld pending probation, for any criminal offense other than a minor vehicle violation? <input type="checkbox"/> Yes <input type="checkbox"/> No					
9. I authorize the Small Business Administration Office of Inspector General to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.					
<p><b>CAUTION:</b> Knowingly making a false statement on this form is a violation of Federal law and could result in criminal prosecution, significant civil penalties, and a denial of your loan, surety bond, or other program participation. A false statement is punishable under 18 USC 1001 by imprisonment of not more than five years and/or a fine of not more than \$10,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than twenty years and/or a fine of not more than \$1,000,000.</p>					
Signature		Title			
Date		Date			
Agency Use Only 10. <input type="checkbox"/> Fingerprints Waived <div style="display: flex; justify-content: space-between; width: 80%;"> <span>Date</span> <span>Approving Authority</span> </div> <input type="checkbox"/> Fingerprints Required <div style="display: flex; justify-content: space-between; width: 80%;"> <span>Date Sent to OIG</span> <span>Date</span> <span>Approving Authority</span> </div>		11. <input type="checkbox"/> Cleared for Processing <div style="display: flex; justify-content: space-between; width: 80%;"> <span>Date</span> <span>Approving Authority</span> </div> <input type="checkbox"/> Request a Character Evaluation <div style="display: flex; justify-content: space-between; width: 80%;"> <span>Date</span> <span>Approving Authority</span> </div>			

Please Note: The estimated burden for completing this form is 15 minutes per response. You will not be required to respond to this information if a valid OMB approval number is not displayed. If you have questions or comments concerning this estimate or other aspects of this information collection, please contact the U.S. Small Business Administration, Chief, Administrative Information Branch, Washington, D.C. 20416 and/or Office of Management and Budget, Clearance Officer, Paperwork Reduction Project.

SBA 912 (5-97) SOP 5010.4 Previous Edition Obsolete

This form was electronically produced by Elite Federal Forms, Inc.



# Appendix 4 (paragraph 2-12) Sample of SBA Form 994, Application for Surety Bond Guarantee Assistance



## U.S. SMALL BUSINESS ADMINISTRATION APPLICATION FOR SURETY BOND GUARANTEE ASSISTANCE

OMB NO. 3245-0007  
Exp. Date: 6/30/00  
See Reverse Side for  
Public Comment Information

<b>TO BE COMPLETED BY PRINCIPAL</b> TRADE NAME OF PRINCIPAL _____  PRINCIPAL'S HOME ADDRESS: STREET, CITY, STATE & ZIP _____  PRINCIPAL'S BUSINESS ADDRESS: STREET, CITY, COUNTY, STATE & ZIP _____  PRINCIPAL'S EMPLOYER ID NUMBER _____	<b>TO BE COMPLETED BY BROKER / AGENT (Producer)</b> NAME OF SURETY _____  NAME OF BROKER / AGENT (Producer) _____  BROKER / AGENT (Producer's) ADDRESS: Street, City, County, State and Zip _____  BROKER / AGENT (Producer's) TELEPHONE NUMBER (Include Area Code) _____  BROKER / AGENT (Producer's) EMPLOYER ID NUMBER _____
--	--

1. Applicant hereby states and affirms the following:

a. The annual gross receipts of my business (including affiliates, as set forth in Part 121 of SBA's Rules and Regulations) as annually averaged over the past 3 fiscal years, was \$\_\_\_\_\_ (to the nearest hundreds). If there are affiliates, attach an explanation sheet, delineating annual gross receipts of each as their interests appear. If there are stockholders, attach an explanation sheet specifying what their shares of the organization(s) are.

Type of business: ☐ Proprietorship, ☐ Partnership, ☐ Corporation  
 Month, Date and Year Business Formed: \_\_\_\_/\_\_\_\_/\_\_\_\_ Joint Venture ☐ Yes ☐ No Number of Employees \_\_\_\_\_

b. A bid, payment or performance bond is required on the following project in order for me to serve as a ☐ primary contractor or ☐ subcontractor thereon.

c. Contractor certifies having attempted (and failed) to obtain the required bonds without the SBA's guarantee; furthermore, the contractor certifies being aware that some sureties charge higher premiums rates for bonds than others do, in accordance with premium rate schedules filed in various States.

d. (1) Brief description of this contract work: \_\_\_\_\_  
 (2) Estimated time required for completion: \_\_\_\_\_ (months); Contract have liquidated damages? ☐ Yes ☐ No.  
 If "yes", how much? \$\_\_\_\_\_ per calendar or wkg. day  
 (3) Anticipated project start date: mo. \_\_\_\_ day \_\_\_\_ yr. \_\_\_\_ (4) Projected completion date: mo. \_\_\_\_ day \_\_\_\_ yr. \_\_\_\_  
 (5) Project Location: \_\_\_\_\_ (6) Name of ☐ obligee or ☐ Prime Contractor: \_\_\_\_\_

e. Subcontractor involved in this job? ☐ Yes ☐ No  
 If yes, Contractor certifies that Subcontractor participation in work under contract is \_\_\_\_%.

f. Approximate value of contract: \$\_\_\_\_\_

g. Applicant, in consideration of assistance from the SBA, herewith agrees it will comply with the nondiscrimination requirements of Title 13, Code of Federal Regulations, Part 113 and Executive Order 11246.

h. SBA is authorized to request this information under Executive Order 11625. It will be used only for statistical purposes. You are not required to disclose this information. Failure to do so will not affect your application.

(1) Principal is a ☐ Veteran ☐ Vietnam-ERA Veteran or ☐ Non Veteran (Check one)  
 (2) Principal is a ☐ Male ☐ Female  
 (3) Principal is a (0) ☐ Black, (1) ☐ Puerto Rican, (2) ☐ American Indian, (3) ☐ Hispanic (other than Puerto Rican) Includes Mexican-American, Cuban, Central or South American or others of Spanish Descent, (4) ☐ Asian (Includes original peoples of the Far East, Southeast Asia, the India Subcontinent or Pacific Islands.)  
 (5) ☐ Eskimos and Aleuts (6) ☐ Undetermined, (7) ☐ White (8) ☐ Multi Groups

2. The Date, time and place of the bid opening is as follows: (if applicable)

Date	Time	Place
_____	_____	_____

3. I have read the "Contractor's Fee" section (reverse side) and agree to abide by this fee schedule. PROVIDED I receive the contract sought and SBA extends its bond guarantee

4. I ☐ do not have an SBA Loan. I ☐ had a previous SBA Loan. I ☐ do have an SBA Loan through the SBA Office in \_\_\_\_\_ with a balance of \$\_\_\_\_\_ as of (Date) \_\_\_\_\_ Loan No. \_\_\_\_\_

5. I ☐ am ☐ am not an SBA 8(a) Qualified Contractor (Approved business plan on file)

This bond application ☐ does ☐ does not pertain to an 8(a) contract

6. I do ☐ or do not ☐ request Business Development Assistance  
 I have ☐ or have not ☐ previously received SBA Business Development Assistance

7. I ☐ have ☐ have not received previous SBA bond guarantee, either under this trade name or another  
 If under another trade name, specify: \_\_\_\_\_

Trade Name: \_\_\_\_\_  
 City/State: \_\_\_\_\_  
 When? 19\_\_\_\_ to 19\_\_\_\_

8. Have you ever defaulted on any previous surety bonds (SBA or other) (either under the contracting concern's trade name or any other concern's of which you have been a principal)? ☐ Yes ☐ No  
 If "yes", detailed particulars are to be attached to all four (4) copies of this application form. Particulars should include at least the following: (1) Name of Surety; (2) Name of obligee; (3) SBQ No. with suffix Number, if applicable; (4) Value of Contracts; (5) Date of Default; (6) Status of Default claim, i.e., amount of loss to Surety, etc.; (7) Contractor's narrative explanation as to reason for default and actions taken to meet the obligations to the Surety under term of the bond(s).

9. Have you made, or are you planning to make, any payments, except for premiums, to the Surety or Agent for whatever purpose as a condition of, or in connection with, the issuance of the bond(s) to be guaranteed by SBA? ☐ Yes ☐ No If "yes", detailed particulars are to be attached to all four (4) copies of this application form.

10. Applicant hereby authorizes any agent, broker, surety company or financial institution in possession of credit, financial or work experience information concerning the undersigned applicant and the applicant's business to release the same to SBA, in order that SBA may evaluate the same for the purpose of bond guarantee assistance. Applicant certifies that any information he submits to any agent, broker or surety company for their evaluation as to the bondability of this contractor is correct and accurate to the best of the contractor's knowledge.

11. Any intentionally false statement in this application or willful misrepresentation relative thereto is a violation of federal law, which may subject you to criminal and civil prosecution, 18 U.S.C. Sections 287, 371, 1001; 15 U.S.C. Section 645; 31 U.S.C. Section 231, carrying fines up to \$10,000 and imprisonment up to five years.

12. Certification: I hereby certify that all information presented herein is complete and accurate to the best of my knowledge and that the previously submitted "Statement of Personal History" (SBA Form 912) remains complete and accurate or a revised SBA Form 912 has been submitted.

13. Certification: I hereby certify that I am currently not delinquent on any Federal Debt or Federally Guaranteed Debt.

Signature (Applicant) \_\_\_\_\_ Date \_\_\_\_\_

Title: \_\_\_\_\_

WHITE COPY—SBA REGIONAL OFFICE YELLOW COPY—SBA DISTRICT OFFICE	PINK COPY—SURETY GOLDENROD COPY—PRODUCER (AGENT BROKER)
---	--

<b>TO BE COMPLETED BY SBA</b>  DATE REC'D BY SBA _____  BY: (NAME) _____ SBQ NO. _____
---

SBA FORM 994 (8-95) USE 10-88 EDITION UNTIL EXHAUSTED




## SURETY BOND GUARANTY APPLICATION PROCEDURES

1. Applicant contacts a surety, or its representative, which participates in SBA's Surety Bond Guarantee Program. The nearest SBA Regional Office may refer applicant to these sureties.
2. Surety will provide applicant with:
  - a. SBA Form 912 (Statement of Personal History)
  - b. SBA Form 1261 (Statements Required by Laws and Executive Orders)
  - c. SBA Form 994 (Application for Surety Bond Guarantee Assistance)
  - d. SBA Form 994F (Schedule of Uncompleted Work)
  - e. Documents relating to credit information and business history which are standard to the surety industry.

Applicant completes these documents and returns them to the surety.
3. If the applicant is for final (performance and/or payment) bonds, it must be accompanied by the Contractor Fee. The check is payable to SBA (or Small Business Administration).
4. Upon completion of favorable underwriting, surety forwards all required documents, including SBA Form 990 (Guarantee Agreement) and SBA Form 991 (Surety Bond Guarantee Agreement Addendum), to the appropriate SBA Regional Office.
5. The SBA Surety Bond Guarantee staff reviews the application, makes the final determination, and notifies surety of its decision. SBA returns the countersigned Guarantee Agreement to the surety. Where SBA declines to issue the guarantee, the check for the Contractor Fee is also returned to the surety.
6. If any adverse information develops subsequent to SBA's approval to the guarantee, surety may decline to issue the bonds.

PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

**Appendix 5**  
**(paragraph 2-12)**  
**Sample SBA Form 994B, Surety Bond Guarantee Underwriting Review**

 <b>U.S. SMALL BUSINESS ADMINISTRATION</b> <b>SURETY BOND GUARANTEE UNDERWRITING REVIEW</b>		<b>OMB APPROVAL No. 3245-0007</b> <b>Exp. Date 6/30/2000</b> <b>SBG No. with Suffix</b>	
<b>PART I SURETY'S REVIEW</b>			
<b>SURETY COMPANY</b>  <small>NOTE: Items 1-17 are to be completed on each guarantee submission to SBA including the initial and all subsequent submissions</small>		<b>CONTRACTORS TRADE NAME &amp; ADDRESS (inc. County &amp; Zip)</b>  	
<b>THIS FORM IS MANDATORY. NO SURETY SUBSTITUTE WILL BE ACCEPTABLE BY SBA.</b>			
<b>1(a). JOB DESCRIPTION AND LOCATION (including obligee):</b>			
<small>SUBCATEGORY CODE(S) OF CONTRACT TYPE _____ (SOP 5045)</small>			
<b>1(b). CONTRACTOR IS</b> <input type="checkbox"/> PRIME OR <input type="checkbox"/> SUB-CONTRACTOR <input type="checkbox"/> ON THIS JOB		<b>1(c). TYPE OF CONTRACT</b> <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> SERVICE <input type="checkbox"/> SUPPLY <input type="checkbox"/> OTHER (Specify)	
<b>2(a). CONTRACT AMOUNT</b> \$ _____		<b>2(b). IF BID WHAT IS 2ND LOW BID?</b> <input type="checkbox"/> NEGOTIATED <input type="checkbox"/> BID \$ _____ % <input type="checkbox"/> N/A	
<b>3(a). BOND AMOUNT (Bid)</b> \$ _____		<b>3(b). IF LIQUIDATED DAMAGES AMT / WORKING OR</b> \$ _____	
<b>4. PRESENT PROJECT SIMILAR TO PREVIOUS WORK PERFORMED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>5. BOND REQUIRED BY ORIGINAL CONTRACT DOCUMENT?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>6(a). SCHEDULED STARTING DATE</b> CALENDAR DAY _____		<b>6(b). SCHEDULED COMPLETION DATE</b> CALENDAR DAY _____	
<b>7(a). WORK IN PROGRESS STATUS REPORT ATTACHED</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>7(b). VERIFIED BY OBLIGEE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>7(c). HOW MANY?</b>		<b>7(d). OF HOW MANY?</b>	
<b>7(e). HAS SURETY CHECKED W/SUPPLIERS?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>7(f). HOW MANY?</b>	
<b>7(g). OF HOW MANY?</b>		<b>7(h). PAYABLES CURRENT?</b> IF NO PROVIDE SPECIFICS	
<b>8. FINANCIAL STATEMENT</b>			
<b>COPY OF CURRENT FINANCIAL STATEMENTS</b> (Company & personal) <input type="checkbox"/> ATTACHED OR <input type="checkbox"/> ALREADY ON FILE W/SBA			
<b>NOTE: THESE STATEMENTS MUST BE SIGNED AND DATED BY PRINCIPALS</b>			
<b>8(a). DATE OF FINANCIAL STATEMENT</b>		<b>8(b). FISCAL YEAR ENDS</b>	
<b>8(c). FINANCIAL STATEMENT PREPARED BY WHOM?</b>			
<b>8(d). F/S SHOW DISCLAIMER?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>8(e). TYPE OF FINANCIAL STATEMENT</b> <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL <input type="checkbox"/> COMPLETED <input type="checkbox"/> CONTRACT <input type="checkbox"/> % OF COMPLETION <input type="checkbox"/> OTHER (Specify)	
<b>8(f). NET WORTH</b> \$ _____		<b>8(g). NET QUICK ASSETS</b> \$ _____	
<b>8(h). WORKING CAPITAL</b> \$ _____			
<b>8(i). WORKING CAPITAL SUFFICIENT?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" HOW MUCH IS NEEDED? SOURCE?			
<b>9(a). SCHEDULE OF AGED PAYABLES &amp; RECEIVABLES ATTACHED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>9(b). VERIFICATION OF PAYABLES?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO % OVER 60 DAYS	
<b>9(c). VERIFICATION OF RECEIVABLES?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO % OVER 60 DAYS			
<b>10. BANK RELATIONS</b>			
<b>10(a). SURETY VERIFIED BANK BALANCE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>10(b). AVERAGE BANK BALANCE</b> \$ _____	
<b>10(c). CONTRACTOR HAVE BANK LINE OF CREDIT?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>10(d). HOW MUCH? (Gross)</b> \$ _____	
<b>10(e). WITH WHOM?</b>		<b>10(f). SECURED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>10(g). TERMS</b>		<b>10(h). HOW MUCH PRESENTLY OWING</b> \$ _____	
<b>10(i). HOW MUCH L/C PRESENTLY UNUSED?</b> \$ _____			
<b>11. BONDING AVAILABILITY?</b>			
<b>11(a). CONTRACTOR HAVE SURETY BONDING LINE?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>11(b). IF YES WHAT AMOUNT?</b> \$ _____	
<b>11(c). SURETY BONDING LINE WITH?</b>			
<b>11(d). INDEMNITIES POSTED?</b> (Company and personal) <input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH EXPLANATION IF "YES" ATTACH COPIES OF INDEMNITY AGREEMENTS AND PERSONAL FINANCIAL STATEMENTS ON ALL INDEMNITORS (including those of third parties unless previously submitted to SBA)			
<b>12. HAS SURETY REQUIRED EXTRA SECURITY</b>			
I.e. A CD OR CASHIERS CHECK FROM CONTRACTOR <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES: WHAT TYPE INSTRUMENT AMOUNT \$ _____			
<b>13(a). SUBCONTRACTORS INVOLVED IN THIS JOB?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		<b>13(b). IF YES, SUBCONTRACTOR PARTICIPATION IN WORK UNDER CONTRACT %</b>	
<b>13(c). PRINCIPAL SUBCONTRACTOR BONDED?</b> <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, AND BY YOUR COMPANY THROUGH THE SBG PROGRAM, ATTACH SPECIFICS			

SBA FORM 994B (10-98) REF. SOP 50 45

PREVIOUS EDITIONS OBSOLETE

Federal Recycling Program  Printed on Recycled Paper

14. DOES SURETY RECOMMEND FINANCIAL / MANAGEMENT / TECHNICAL ASSISTANCE BY SBA? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YES, WHAT TYPE & WHY							
15. CHECKLIST OF REQUIRED ITEMS							
CONTRACTOR APPLICATION FEE <input type="checkbox"/>		CONTRACTOR PROCESSING FEE <input type="checkbox"/>		SBA FORM 994 <input type="checkbox"/>		SBA FORM 880 <input type="checkbox"/>	
SBA FORM 312 <input type="checkbox"/>		SBA FORM 304F OR SUBSTITUTE <input type="checkbox"/>		COPIES OF BONDS IF SPECIAL CONDITIONS <input type="checkbox"/>		GENERAL INDEMNITY AGREEMENT <input type="checkbox"/>	
16. CONTINUATION SHEETS ATTACHED?				17. RESUME(S) OF OFFICERS, OWNERS AND/OR KEY EMPLOYEES ATTACHED?			
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO			
18. CONTRACTOR'S QUESTIONNAIRE ATTACHED?				19. BUSINESS PLAN ATTACHED?			
<input type="checkbox"/> YES <input type="checkbox"/> NO				<input type="checkbox"/> YES <input type="checkbox"/> NO			
20. TYPE OF CONTRACTUAL WORK THIS FIRM HAS DONE PREVIOUSLY							
21(a). LARGEST PREVIOUS CONTRACT UNDERTAKEN?		21(b). LARGEST PREVIOUS WORK PROGRAM UNDERTAKEN?		22(a). ANY DISPUTES?		22(b). ON SCHEDULE?	
\$		# OF JOBS		<input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH DETAILS		<input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH DETAILS	
23(a). CONTRACTOR EVER FAILED TO COMPLETE JOB?				23(b). HAS CONTRACTOR EVER DEFAULTED ON A CONTRACT FORCING A SURETY TO SUFFER A LOSS?			
<input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH SPECIFICS				<input type="checkbox"/> YES <input type="checkbox"/> NO IF "YES" ATTACH SPECIFICS			
24(a). CONTRACTOR HAVE ADEQUATE EQUIPMENT?		24(b). OWNED?		24(c). LEASED?			
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO			
25. CONTRACTOR TAXES CURRENT?		26. CONTRACTOR INSURANCE COVERAGE SUFFICIENT?		27(a). CONTRACTOR PREVIOUSLY BONDED?			
<input type="checkbox"/> YES <input type="checkbox"/> NO IF "NO" ATTACH SPECIFICS		<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> YES <input type="checkbox"/> NO			
27(b). LARGEST AMOUNT BONDED?				27(c). WITH WHOM?			
\$				JOB: \$			
27(d). IF CHANGE OF SURETY, WHY?							
28. ATTACHED RESUME(S) OF OFFICERS, OWNERS AND/OR KEY EMPLOYEES							
<input type="checkbox"/> YES <input type="checkbox"/> NO							
29(a). MANAGING AGENCY OF SURETY (if applicable)				29(b). MANAGING AGENCY'S EMPLOYER (FMS) I.D.			
30. REMARKS/CONCLUSIONS. INCLUDE OVERALL FINANCIAL CONDITION, COMPARATIVE TRENDS AND JUSTIFICATION FOR SBA ASSISTANCE.							
<p>IN OUR OPINION THE PRINCIPAL APPEARS TO HAVE THE FINANCIAL/MANAGEMENT/TECHNICAL ABILITIES TO SUCCESSFULLY COMPLETE THIS CONTRACT. HOWEVER, WE FEEL THIS SUBCONTRACTOR FALLS BELOW THE NORMAL UNDERWRITING STANDARD OF OUR COMPANY, AND WE WILL NOT ISSUE BONDS TO THIS CONTRACTOR WITHOUT THE SBA GUARANTEE.</p>							
SIGNATURE OF UNDERWRITER				DATE			
TYPED NAME				TELEPHONE NO. (Inc. Area Code)			
TITLE OF UNDERWRITER				AGENCY NAME (if applicable)			
ADDRESS OF UNDERWRITER				CITY		STATE	
DATE RECEIVED BY SBA				BY: (signature)			

SBA Form 994B (10-88)

TO BE COMPLETED BY SBA				
1. MEETS SBA SIZE STANDARDS <input type="checkbox"/> YES <input type="checkbox"/> NO		2. FINANCIAL / MANAGEMENT / TECHNICAL ASSISTANCE REQUESTED OR RECOMMENDED <input type="checkbox"/> YES <input type="checkbox"/> NO		
2(a). BY WHOM?		2(b). WHAT TYPE?		
2(c). SBA ACTION TAKEN				
3(a). IF NECESSARY ASSISTANCE IS NOT READILY AVAILABLE IN GOVERNMENT HAVE YOU REFERRED APPLICANT TO FUNDED ASSISTANCE PROGRAMS, i.e. MINORITY CONTRACTORS ASSISTANCE PROJECT (MCAP), ETC.? <input type="checkbox"/> YES <input type="checkbox"/> NO				
3(b). IF YES NAME THE PROGRAM(S):				
4. BASED ON THE UNDERWRITING DATA SUBMITTED:				
4(a). THERE <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REASON TO EXPECT SUCCESSFUL COMPLETION OF THE CONTRACT		4(b). THE COSTS <input type="checkbox"/> DO NOT <input type="checkbox"/> DO APPEAR TO BE REASONABLE IN ACCORDANCE WITH STD. SURETY INDUSTRY PRACTICES		
5. IT HAS BEEN DETERMINED THAT THE REQUESTED BOND(S) <input type="checkbox"/> IS <input type="checkbox"/> IS NOT NECESSARY, REQUIRED BY THE CONTRACT DOCUMENT'S TERMS, AND THE SURETY HAS INDICATED THAT IT WILL NOT ISSUE THE BOND(S) WITHOUT THE SBA GUARANTEE. FURTHERMORE, NO ADVERSE DATA CONCERNING THE SURETY'S PREMIUM/FEE SCHEDULE WAS REVEALED IN THE CONTRACTOR'S APPLICATION (SBA Form 994)				
6. ATTACHMENTS (Check appropriate boxes)				
CONTINUATION SHEETS	INDEMNITY AGREEMENT(S)	CONTRACTOR'S QUESTIONNAIRE	SBA FORM 991	
CONTRACTOR'S CURRENT BUSINESS FINANCIAL STATEMENT	PERSONAL FINANCIAL STATEMENT(S)	SBA FORM 912	SBA FORM 990	
RESUMES OF PRINCIPAL(S), OWNER(S) AND/OR KEY EMPLOYEES	CONTRACTOR'S BUSINESS PLAN	SBA FORM 994F		
7. REMARKS/CONCLUSIONS				
8. PRINCIPAL'S TRADE NAME				
9. RECOMMENDATION/ACTION				
APPROVE	DISAPPROVE	SIGNATURE	TITLE	DATE

SBA FORM 994F (10-88)

PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).



**Appendix 6**  
**(paragraph 2-12)**  
**Sample SBA Form 994C, Surety Bond Guarantee Review Update**



**U.S. Small Business Administration**  
**SURETY BOND GUARANTEE REVIEW UPDATE**

OMB Approval No. 3245-0007  
 Exp. Date: 6-30-00

SURETY'S REVIEW				
<b>SURETY COMPANY</b>  All items are to be completed for each submission. Except: Form 994B will be completed entirely when new financial statements or pertinent information is received. Place re- marks on reverse.			<b>CONTRACTORS TRADE NAME &amp; ADDRESS (City, County &amp; Zip)</b>  	
THIS FORM IS MANDATORY. NO SURETY SUBSTITUTE WILL BE ACCEPTED BY SBA				
1(a). JOB DESCRIPTION AND LOCATION (including obligee):				
SUBCATEGORY CODE(S) OF CONTRACT TYPE (SOP5045)				
1(b). CONTRACTOR IS <input type="checkbox"/> PRIME <input type="checkbox"/> SUBCONTRACTOR		1(c). TYPE OF CONTRACT <input type="checkbox"/> CONSTRUCTION <input type="checkbox"/> SERVICE <input type="checkbox"/> SUPPLY <input type="checkbox"/> OTHER (Specify)		1(d). PHASED PROJECT <input type="checkbox"/> YES <input type="checkbox"/> NO
2(a). CONTRACT AMOUNT \$		2(c). IF BID, BID AMOUNT \$		2(d). IF BID WHAT IS 2ND LOW BID \$
2(b). <input type="checkbox"/> NEGOTIATED <input type="checkbox"/> BID		3(c). PAYMENT AMOUNT \$		2(e). BID: DATE & TIME
3(a). BID BOND AMOUNT \$	3(b). PERFORMANCE AMOUNT \$	3(d). MAINTENANCE BOND <input type="checkbox"/> YES <input type="checkbox"/> NO	4. WORK ON HAND	
5. LIQUIDATED DAMAGES <input type="checkbox"/> YES <input type="checkbox"/> NO		6. SUBCONTRACTORS INVOLVED		7. BOND REQUIRED BY ORIGINAL CONTRACT DOCUMENT <input type="checkbox"/> YES <input type="checkbox"/> NO
AMOUNT \$ (CALENDAR/WORKING DAY)		PERCENT %		
8(a). SCHEDULED STARTING DATE		8(b). SCHEDULED COMPLETION DATE		8(c). CONTRACTOR STARTED JOB IF "YES" DATE STARTED <input type="checkbox"/> YES <input type="checkbox"/> NO
9. CHANGE OF SURETY <input type="checkbox"/> YES <input type="checkbox"/> NO		EXPLAIN ON REVERSE SIDE		10. DATE OF LAST FINANCIAL STATEMENT
IN OUR OPINION THE PRINCIPAL APPEALS TO HAVE THE FINANCIAL / MANAGEMENT / TECHNICAL ABILITIES TO SUCCESSFULLY COMPLETE THIS CONTRACT. HOWEVER, WE FEEL THIS CONTRACTOR FALLS BELOW THE NORMAL UNDERWRITING STANDARD OF OUR COMPANY, AND WE WILL NOT ISSUE BONDS TO THIS CONTRACTOR WITHOUT THE SBA GUARANTEE.				
SIGNATURE OF UNDERWRITER			DATE	
TYPE NAME			TELEPHONE NO. (include Area Code)	
TITLE OF UNDERWRITER			AGENCY NAME (if applicable)	
ADDRESS OF UNDERWRITER			CITY	STATE ZIP
DATE RECEIVED BY SBA			BY: (Initials)	
BASE ON THE UNDERWRITING DATA SUBMITTED: <b>- TO BE COMPLETED BY SBA -</b>				
1. <input type="checkbox"/> THERE IS <input type="checkbox"/> IS NOT REASON TO EXPECT SUCCESSFUL COMPLETION OF THE CONTRACT		2. THE COSTS <input type="checkbox"/> DO <input type="checkbox"/> DO NOT APPEAR TO BE REASONABLE IN ACCORDANCE WITH STD. SURETY INDUSTRY PRACTICES		
3. IT HAS BEEN DETERMINED THAT THE REQUESTED BOND(S) <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED BY THE CONTRACT DOCUMENTS TERMS, AND THE SURETY HAS INDICATED THAT WILL NOT ISSUE THE BOND(S) WITHOUT THE SBA GUARANTEE. FURTHERMORE, NO ADVERSE DATA CONCERNING THE SURETY'S PREMIUM/FEE SCHEDULE WAS REVEALED IN THE CONTRACTOR'S APPLICATION (SBA Form 994).				
4. REMARKS/CONCLUSIONS				
5. PRINCIPALS TRADE NAME			6. SBG NUMBER	
7. RECOMMENDATION/ACTION				
APPROVE	DISAPPROVE	SIGNATURE	TITLE	DATE

SBA FORM 994C (6-96)

This form was electronically produced by Elite Federal Forms, Inc.

Printed on Recycled Paper

PLEASE NOTE: The estimated burden for completing this form is 10 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to the U.S. Small Business Administration, Chief, AIB, 409 3rd St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building Room 10202, Washington, D.C. 20503. 3245-0007.



**Appendix 7**  
**(paragraph 2-11)**  
**Sample of SBA Form 994F, Schedule of Uncompleted Work**

OMB APPROVAL NO. 3245-0007  
 EXPIRATION DATE: 6/30/00  
 IF YOU HAVE COMMENTS, PLEASE  
 WRITE HERE  
 SEE REVERSE SIDE FOR  
 PUBLIC COMMENT INFORMATION

SMALL BUSINESS ADMINISTRATION SCHEDULE OF UNCOMPLETED WORK (ALL WORK—BONDED & UNBONDED—IF COST PLUS PLEASE INDICATE)									
NAME OF CONTRACTOR		DATE AS OF		DATE AS OF		DATE AS OF		DATE AS OF	
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5	6	7	8	9	10
1	2	3	4	5					



PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

**Appendix 8**  
**(paragraph 2-12)**  
**Sample SBA Form 990, Surety Bond Guarantee Agreement**



**U.S. SMALL BUSINESS ADMINISTRATION**  
**SURETY BOND GUARANTEE AGREEMENT**

OMB No 3245-0007  
Exp. Date 6/30/00  
See Reverse Side for  
Public Comment Information

1. By its authorized signature in Block 16 on the date stated in Block 18, SBA agrees to guarantee the bond(s) described herein as of the time of the issuance, as defined in 13 CFR 115.4, subject to the regulations in 13 CFR 115. SBA guarantees _____% (not to exceed 80%) of the loss, in consideration, among other things, for \$_____ on each \$1000 of the bond or contract amount, according to surety's own premium base.			
2. Surety Name		3. Principal's Trade Name	
4. Surety Underwriter's Name		5. Principal's Trade Address: Street	
6. Principal's Name		Codes: City, State, Zip and County _____	
7. CONTRACT—Description of nature and extent (volume) of work, location, starting date and anticipated completion date:			
8. Obligor (include address)			
9. Estimated Contract Amount:		10. Contract <input type="checkbox"/> Bid: Date & Time <input type="checkbox"/> Negotiated	
11. Bonds Required <input type="checkbox"/> Bid <input type="checkbox"/> Payment <input type="checkbox"/> Performance		12. Ancillary Bond(s) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, Explain:	
13. Bond Amount (%) Bid Payment Performance			
14. Signature of Surety's Attorney-in-Fact:  Typed Name:		15. Date:	
16. SBA Signature:  Typed Name: Disposition: <input type="checkbox"/> Approved <input type="checkbox"/> Returned/Withdrawn <input type="checkbox"/> Declined		17. Title:	18. Date:
Items (19-26) to be completed only for contracts awarded and final bond guarantee requests			
19. Date of Contract Award	20. Contract Amount	21. SBA Guarantee Fee From Contractor \$ (remitted herewith)	
22. Bond Amounts Bid Payment Performance \$ \$ \$		23. Based on: <input type="checkbox"/> Bond Amt <input type="checkbox"/> Contract Amt Premium Charged By Surety: \$ %	
24. Surety's Bond Number(s) Payment Performance # #		25. Project for: <input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Special District <input type="checkbox"/> Private <input type="checkbox"/> Local <input type="checkbox"/> Other	
26. If awarded job was bid, BID SPREAD: Low \$ 2nd Low \$ 3rd Low \$ Highest\$			
27. SBA's SBG No. w/Suffix	28. Date Received	29. Received By:  Signature:	

SBA Form 990 (6-96) REF SOP 50 45  
Previous editions obsolete

Federal Recycling Program  Printed on Recycled Paper

By the signature of its authorized representative on the reverse side of this form (Blocks 16-18), the U.S. Small Business Administration guarantees the Surety named in Item 2 against loss resulting from the breach by the Principal of the terms of the bond(s) described in Blocks 11, 12, 13, 22 and 24, pursuant and subject to 15 U.S.C. §694a and b, the regulations thereunder (13 CFR Part 115) and the conditions and representations stated below, in reliance on the declarations made on the reverse side hereof, and on the several forms submitted and signed by surety as applicable. This guaranty shall become effective upon the issuance (as defined in said regulations) of the SBA-guaranteed bond by the Surety.

1. Surety represents that I has determined the accuracy and completeness of the information in the Forms submitted by Surety which relate to this agreement, in accordance with generally accepted surety industry underwriting practices. Said Forms are incorporated herein by this reference.
2. Surety shall, conditional on the execution of this guarantee by SBA, if the Surety determines that the Contract price is reasonable and the contract amount does not exceed \$1,250,000, become Surety on bid, performance, payment, and other ancillary and coterminous bond(s) required for the award of the Contract. Surety may withdraw its decision to issue such bond(s) if prescribed underwriting conditions are not met or if additional information comes to the attention of Surety of a nature so as to change its underwriting determination, and notice is given to SBA.
3. The terms and conditions of such bond(s) will be in accord with those generally established and accepted by the surety industry for the type of contract for which such bond(s) are required to be furnished by Principal, and Surety represents that such bonds would not be provided for Principal on this Contract without this SBA guarantee.
4. If any suit or claim is filed against Surety upon said bond(s), Surety shall inform SBA of the same within 30 days of receipt of notice thereof in the Surety's home office. Unless SBA decides otherwise, and so notifies Surety, Surety shall take charge of all suits or claims arising under said bond(s) and compromise, settle or defend such suit or claim until so notified. Surety shall take all steps necessary to mitigate any loss resulting from Principal's default. Surety shall not join SBA in any lawsuit to which Surety is a party unless SBA has denied liability or has agreed to such joinder in writing.
5. No employee of SBA has authority to waive, change or alter the terms of this Agreement, unless such alterations are separately attached hereto and both the SBA and Surety's authorized representatives have signed and dated their assent thereto.
6. This Agreement is made exclusively for the benefit of SBA and the Surety, and does not confer any rights or benefits on any other party, such as any right of action against SBA by any person claiming under SBA-guaranteed bonds or otherwise. In the event of the Surety's insolvency, SBA shall not be liable to the receiver or other representative of the surety except for any loss incurred and monies actually paid by such representative under the bonds guaranteed by SBA.
7. If any provision of this Agreement is in conflict with any SBA regulation, such regulation shall prevail in construing or applying this Agreement.
8. Any intentionally false statement or willful misrepresentation in connection with the procurement of the Guarantee or claim for payment pursuant to this Agreement is a violation of Federal law, subject to criminal and civil prosecution under 18 U.S.C. §§ 287, 371, 1001, 15 U.S.C. §645, or 31 U.S.C. §231, carrying fines up to \$10,000 and imprisonment of up to five years.

PLEASE NOTE: The estimated burden for completing this form is 5 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

## U.S. SMALL BUSINESS ADMINISTRATION

CMB NO. 3245-0007  
Exp. Date: 6/30/00

2. In the spaces below the *Principal* has certified that all suppliers and subcontractors are paid to date. If additional spaces are needed attach hereto. A waiver of lien from each, or an explanation satisfactory to SBA why such certification can not be produced, is attached hereto.

**Subcontractors:**

1.			
2.			
3.			
4.			
5.			

The *Principal* hereby certifies that all taxes and labor costs in connection with this job are current.

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Date

3. The *Obligee* has certified below that all payments due under the contract to present status have been made and that the job has been satisfactorily complete to present status.

\_\_\_\_\_  
Signature of Obligor

\_\_\_\_\_  
Date

4. All documents required from the Principal and Obligor are attached hereto and all items on this form have been certified to SBA's satisfaction.

SBA Signature \_\_\_\_\_ Date \_\_\_\_\_

**5. Certification:** Any intentionally false statement in this application or willful misrepresentation relative thereto is a violation of federal law, which may subject you to criminal and civil prosecution, 18 U.S.C. Sections 287, 371, 1001; 15 U.S.C. Section 645; 31 U.S.C. Section 231, carrying fines up to \$10,000 and imprisonment up to five years.

PLEASE NOTE: The estimated burden for completing this form is 20 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3<sup>rd</sup> St., S.W., Washington, D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. OMB Approval (3245-0007).

**SBA Form 991 (10-88)**  
**REF SOP 50 45**

**Yellow Copy—SBA Regional Office**  
**Pink—Agent/Producer**  
**Blue—Obitage**

~~White-Surety~~  
~~Goldenrod-Рлдсрл~~

DO NOT REMOVE ANY COPIES OF THIS FORM. UPON COMPLETION AND APPROVAL THE SBA REGIONAL OFFICE WILL KEEP THE YELLOW COPY AND FORWARD ALL OTHER COPIES TO THE SURETY FOR FINAL DISTRIBUTION.



**Appendix 10**  
**(paragraph 2-12)**  
**Sample of SBA Form 1624, Certification, Regarding Debarment, Suspension, Ineligibility**  
**and Voluntary Exclusion Lower Tier Covered Transaction**



**Certification Regarding**  
**Debarment, Suspension, Ineligibility and Voluntary Exclusion**  
**Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 13 CFR Part 145. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Business Name \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_  
 Name and Title of Authorized Representative

\_\_\_\_\_  
 Signature of Authorized Representative

-2-

## INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntary excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Appendix 11 (paragraph 2-12)

#### Sample of SBA form 1261, Statements Required by Law and Executive Orders

## Statements Required by Laws and Executive Orders

Federal executive agencies, including the Small Business Administration (SBA), are required to withhold or limit financial assistance, to impose special conditions on approved loans, to provide special notices to applicants or borrowers and to require special reports and data from borrowers in order to comply with legislation passed by the Congress and Executive Orders issued by the President and by the provisions of various inter-agency agreements. SBA has issued regulations and procedures that implement these laws and executive orders, and they are contained in Parts 112, 113, 116, and 117, Title 13, Code of Federal Regulations Chapter 1, or Standard Operating Procedures.

This form contains a brief summary of the various laws and executive orders that affect SBA's business loan programs and gives applicants and borrowers the notices required by law or otherwise. The signatures required on the last page provide evidence that SBA has given the necessary notices.

### Freedom of Information Act (5 U.S.C. 552)

This law provides, with some exceptions, that SBA must supply information reflected in agency files and records to a person requesting it. Information about approved loans that will be automatically released includes, among other things, statistics on our loan programs (individual borrowers are not identified in the statistics) and other information such as the names of the borrowers (and their officers, directors, stockholders or partners), the collateral pledged to secure the loan, the amount of the loan, its purpose in general terms and the maturity. Proprietary data on a borrower would not routinely be made available to third parties. All requests under this Act are to be addressed to the nearest SBA office and be identified as a Freedom of Information request.

### Right to Financial Privacy Act of 1978 (12 U.S.C. 3401)

This is notice to you as required by the Right to Financial Privacy Act of 1978, of SBA's access rights to financial records held by financial institutions that are or have been doing business with you or your business, including any financial institutions participating in a loan or loan guarantee. The law provides that SBA shall have a right of access to your financial records in connection with its consideration or administration of assistance to you in the form of a Government loan or loan guaranty agreement. SBA is required to provide a certificate of its compliance with the Act to a financial institution in connection with its first request for access to your financial records, after which no further certification is required for subsequent accesses. The law also provides that SBA's access rights continue for the term of any approved loan or loan guaranty agreement. No further notice to you of SBA's access rights is required during the term of any such agreement.

The law also authorizes SBA to transfer to another Government authority any financial records included in an application for a loan, or concerning an approved loan or loan guarantee, as necessary to process, service or foreclose on a loan or loan guarantee or to collect on a defaulted loan or loan guarantee. No other transfer of your financial records to another Government authority will be permitted by SBA except as required or permitted by law.

SBA FORM 1261 (2-91) REF: SOP 50 10 USE 4-89 Edition until Exhausted



## **Flood Disaster Protection Act**

(42 U.S.C. 4011)

Regulations have been issued by the Federal Insurance Administration (FIA) and by SBA implementing this Act and its amendments. These regulations prohibit SBA from making certain loans in an FIA designated floodplain unless Federal flood insurance is purchased as a condition of the loan. Failure to maintain the required level of flood insurance makes the applicant ineligible for any future financial assistance from SBA under any program, including disaster assistance.

## **Executive Orders -- Floodplain Management and Wetland Protection**

(42 F.R. 26951 and 42 F.R. 26961)

The SBA discourages any settlement in or development of a floodplain or a wetland. This statement is to notify all SBA loan applicants that such actions are hazardous to both life and property and should be avoided. The additional cost of flood preventive construction must be considered in addition to the possible loss of all assets and investments in future floods.

## **Lead-Based Paint Poisoning Prevention Act**

(42 U.S.C. 4821 et seq.)

Borrowers using SBA funds for the construction or rehabilitation of a residential structure are prohibited from using lead-based paint (as defined in SBA regulations) on all interior surfaces, whether accessible or not, and exterior surfaces, such as stairs, decks, porches, railings, windows and doors, which are readily accessible to children under 7 years of age. A "residential structure" is any home, apartment, hotel, motel, orphanage, boarding school, dormitory, day care center, extended care facility, college or other school housing, hospital, group practice or community facility and all other residential or institutional structures where persons reside.

## **Equal Credit Opportunity Act**

(15 U.S.C. 1691)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

## **Civil Rights Legislation**

All businesses receiving SBA financial assistance must agree not to discriminate in any business practice, including employment practices and services to the public, on the basis of categories cited in 13 C.F.R., Parts 112, 113 and 117 of SBA Regulations. This includes making their goods and services available to handicapped clients or customers. All business borrowers will be required to display the "Equal Employment Opportunity Poster" prescribed by SBA.

## **Executive Order 11738 -- Environmental Protection**

(38 F.R. 25161)

The Executive Order charges SBA with administering its loan programs in a manner that will result in effective enforcement of the Clean Air Act, the Federal Water Pollution Act and other environmental protection legislation. SBA must, therefore, impose conditions on some loans. By acknowledging receipt of this form and presenting the application, the principals of all small businesses borrowing \$100,000 or more in direct funds stipulate to the following:

1. That any facility used, or to be used, by the subject firm is not cited on the EPA list of Violating Facilities.
2. That subject firm will comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Section 114 and Section 308 of the respective Acts, and all regulations and guidelines issued thereunder.
3. That subject firm will notify SBA of the receipt of any communication from the Director of the Environmental Protection Agency indicating that a facility utilized, or to be utilized, by subject firm is under consideration to be listed on the EPA List of Violating Facilities.

## **Occupational Safety and Health Act**

(15 U.S.C. 651 et seq.)

This legislation authorizes the Occupational Safety and Health Administration in the Department of Labor to require businesses to modify facilities and procedures to protect employees or pay penalty fees. In some instances the business can be forced to cease operations or be prevented from starting operations in a new facility. Therefore, in some instances SBA may require additional information from an applicant to determine whether the business will be in compliance with OSHA regulations and allowed to operate its facility after the loan is approved and disbursed.

Signing this form as borrower is a certification that the OSA requirements that apply to the borrower's business have been determined and the borrower to the best of its knowledge is in compliance.

## **Debt Collection Act of 1982 Deficit Reduction Act of 1984**

(31 U.S.C. 3701 et seq. and other titles)

These laws require SBA to aggressively collect any loan payments which become delinquent. SBA must obtain your taxpayer identification number when you apply for a loan. If you receive a loan, and do not make payments as they come due, SBA may take one or more of the following actions:

- Report the status of your loan(s) to credit bureaus
- Hire a collection agency to collect your loan
- Offset your income tax refund or other amounts due to you from the Federal Government
- Suspend or debar you or your company from doing business with the Federal Government
- Refer your loan to the Department of Justice or other attorneys for litigation
- Foreclose on collateral or take other action permitted in the loan instruments.

## Immigration Reform and Control Act of 1986

(Pub. L. 99-603)

If you are an alien who was in this country illegally since before January 1, 1982, you may have been granted lawful temporary resident status by the United States Immigration and Naturalization Service pursuant to the Immigration Reform and Control Act of 1986 (Pub. L. 99-603). For five years from the date you are granted such status, you are not eligible for financial assistance from the SBA in the form of a loan or guaranty under section 7(a) of the Small Business Act unless you are disabled or a Cuban or Haitian entrant. When you sign this document, you are making the certification that the Immigration Reform and Control Act of 1986 does not apply to you, or if it does apply, more than five years have elapsed since you have been granted lawful temporary resident status pursuant to such 1986 legislation.

### Applicant's Acknowledgement

My signature acknowledges receipt of this form, that I have read it and that I have a copy for my files. My signature represents my agreement to comply with the requirements the Small Business Administration makes in connection with the approval of my loan request and to comply, whenever applicable, with the hazard insurance, lead-based paint, civil rights or other limitations in this notice.

Business Name \_\_\_\_\_

\_\_\_\_\_ By \_\_\_\_\_  
Date Signature and Title

The Proprietor, each General Partner (or Limited Partner owning 20% or more), each Guarantor, each Corporate Officer, each Director, each Stockholder owning 20% or more, and where appropriate, the spouses of each of these, must sign. The person signing on behalf of the business must also sign individually.

\_\_\_\_\_ Date Signature

\_\_\_\_\_ Date Signature

\_\_\_\_\_ Date Signature

\_\_\_\_\_ Date Signature

SBA FORM 1261 (2-91) REF: SOP 50 10 USE 4-89 Edition until Exhausted

\*U.S. Government Printing Office: 1992 — 312-624/62837

**Appendix 12**  
**(paragraph 2-12)**  
**Sample SBA Form 994H, Default Report, Claims for Reimbursement**  
**and Record of Administrative Action**

U. S. Small Business Administration  
 Surety Bond Guarantee Program

OMB No. 3245-0007  
 Expiration Date 6/30/00

DEFAULT REPORT, CLAIM FOR REIMBURSEMENT,  
 AND RECORD OF ADMINISTRATIVE ACTION

Any intentionally false statement or willful misrepresentation in connection with a claim for payment pursuant to a Guarantee Agreement is a violation of Federal law, subject to criminal and civil prosecution under 18 USC Sections 287, 371, 1001, 15 USC Section 645 and 31 USC Section 231 carrying possible fines and/or imprisonment.

**GENERAL INSTRUCTIONS:**

This form combines SBA Forms 994H-Claim for Reimbursement, 994J-Report of Default, and 1101-SBA/DBG Modification /Administrative Action. It should be used as follows: (Please type or print legibly.)

1. To file a Default Status Report; complete sections: A, B, C, H
2. To file a Claim for Reimbursement; complete sections: A, C, E, F, G, H
3. To record SBA Administrative Action; complete sections: A, C, D

**A. SBA IDENTIFICATION SUMMARY**

SBA NUMBER: _____		CONTRACTOR'S NAME: _____	
SURETY ALPHA CODE: _____		CONTRACT AMOUNT \$ _____	
BOND NUMBER: _____		990 DATE ____/____/____ (See reverse)	
CLAIM NUMBER: _____		OBLIGEE _____	
		PROJECT _____	
		DEFAULT DATE: ____/____/____	
DEFAULT STATUS CODE:	BOND TYPE:	LAST STATUS REPORT: ____/____/____	
01=Active		CLOSE DATE: (SBA USE ONLY) ____/____/____	
02=Closed-No Loss	Payment	NO CHANGE FROM PREVIOUS REPORT	
03=Closed-Subrogation	Performance	STATUS UPDATE INCLUDED: (Describe below,	
04=Closed-Final	Bid	current status and default completion plans.)	
05=Closed-Settled			
DEFAULT REASON CODE: ____ (From reverse)		SURETY RESERVE AMOUNT: \$ _____	
SBA'S RESERVE AMOUNT: \$ _____			

**B. SUBROGATION ACTIVITY** (Explain in Section C., below, or attach a separate sheet, if necessary.)

<input type="checkbox"/> Litigation pending	<input type="checkbox"/> Settled for \$ _____	<input type="checkbox"/> No change from last report
<input type="checkbox"/> Payments being made	<input type="checkbox"/> None - Bankrupt/Defunct	<input type="checkbox"/> Approval requested to Close Final
Other anticipated recovery from salvage, indemnities, etc. \$ _____		<input type="checkbox"/> Firm Collateral Held \$ _____

**C. EXPLANATIONS, COMMENTS, ADMINISTRATIVE ACTIONS** (Attach additional sheet if warranted.)

**SPECIAL HANDLING OF CHECKS** (Manual 1166's)

<input type="checkbox"/> Consultants	Mail to payee:
<input type="checkbox"/> Claims	Payee _____
<input type="checkbox"/> Other	Name _____
<input type="checkbox"/> Deliver to SBA:	Add. _____
Office	City/ST/Zip _____

(SBA USE ONLY)

**D. SBA/DBG CLAIM PAYMENT RECOMMENDATION, REVIEW, APPROVAL AND AMOUNT OF CLAIM APPROVED**

THIS REQUEST IS HEREBY APPROVED FOR PAYMENT IN ACCORDANCE WITH SBA REGULATIONS.

AMOUNT REQUESTED \$ \_\_\_\_\_ AMOUNT APPROVED \$ \_\_\_\_\_ EFFECTIVE DATE (Date SBA received) \_\_\_\_/\_\_\_\_/\_\_\_\_

RECOMMENDED BY (Signature/Title/Date)	REVIEWER (Initials/Date)	2nd REVIEWER (Initials/Date)	APPROVING OFFICIAL (Signature/Title/Date)
--	-----------------------------	---------------------------------	--

INSTRUCTIONS AND CLARIFICATION  
OF SELECTED FORM 994H ITEMS

General

1. This form may be used to report the default of an SBG contractor, as well as for periodic status reporting in accordance with the terms of SBA's Surety Bond Guarantee Agreement. If a different format is used, all information requested on 994H Form must be provided.
2. A separate SBA Form 994H must be used for each bond in default/claim status. An additional sheet/letter may be attached for more detailed reporting.
3. If this is an initial default/claim notice:
  - a. A copy of this form should be sent simultaneously to the SBA Field Office which guaranteed the bond in caption.
  - b. Provide a detailed report including the percentage of completion, remaining contract funds, method of selecting completion contractor, description of how claim situation arose, present condition, surety's plans for resolution and salvage, anticipated loss.

Specific

Section A. 1) "SBG Number" - enter the full 14-digit number.

2) "990 Date" is the date SBA Form 990, "Surety Bond Guarantee Agreement," was signed by SBA Official.

3) DEFAULT REASON CODES:

<u>Code</u>	<u>Code</u>
1. Underbidding	14. General's subcontractor in default
2. Weather/natural disasters	15. Sub's General in default
3. Shortage in critical materials/ delays in receiving same	16. Possible sub-busting on part of general
4. Alleged embezzlement	17. IRS lien
5. Financial mismanagement	18. Sub's General behind Schedule
6. Incompetence/poor workmanship	19. Unforeseen physical obstacle
7. Union strike/labor trouble	20. Shortage of labor
8. Illness or death of key employee	21. Principal fails to appear at job site to begin work
9. Walked off job	22. Fire damage
10. Dispute with obligee	23. Materialman lien
11. Possible fraudulent operation on part of principal	24. Labor lien
12. Despondency	25. Principal failed to sign contract
13. Co-mingling of funds	26. Surety did not issue final bond
	27. Other

Section E. 1) List all loss items as well as funds deposited to a trust account. A separate accounting must accompany any request for reimbursement of loss incurred via a trust account. Such accounting must provide the source of all deposits to the account, and the disposition of all funds from the account (by date, draft number, payee and amount). Any balance remaining in the account or any amounts not accounted for as expenditures comprise the trust account balance and are to be included in Section G. as "Undisbursed Trust Account Balance."

Section F. 1) List all recovery items received by the Surety. Also, list as recovery, all trust account remaining balances returned by the trustee.

Section G. 1) The "Undisbursed Trust Account Balance" is reduced to zero when the remaining balances are returned by the trustee. See instructions for Section E., above.  
 2) The "Total of Loss Disbursements" is the total amount from Section E., "Itemization of Surety Loss."  
 3) The "TOTAL LOSS DISBURSEMENTS" is the combined total of loss disbursements itemized and previously reported.  
 4) The "Deductible Amount" is 80% of the Premium amount up to \$500 for Guarantee Agreements written on/after April 21, 1976.

PLEASE NOTE: The estimated burden for completing this form is 1 hour per response. You are not required to respond to any collection of information unless it displays a currently valid OMB approval number. Comments on the burden should be sent to U.S. Small Business Administration, Chief, AIB, Washington D.C. 20416 and Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503.  
 OMB Approval (3245-0007).

SBA FORM 994H (4-86)

**Appendix 13**  
**(paragraph 3-3)**  
**Sample of the Closing Summary Review Sheet**

SUMMARY REVIEW SHEET  
Single Bond Report

IDENTIFICATION

CASE NAME

SURETY NAME

CLOSED FINAL

SBG#

Bond Amount \$

Claim No.

Net Amt. \$

SBA Recovery \$

Surety Net Loss \$

COMMENTS

RECOMMENDED BY \_\_\_\_\_ DATE \_\_\_\_\_  
APPROVED BY \_\_\_\_\_ DATE \_\_\_\_\_



**Appendix 14**  
**(paragraph 3-5)**  
**Sample of a Reinstatement Letter**

DATE:

TO: \_\_\_\_\_, Supervisory SBG Specialist  
 Area Office

FROM: \_\_\_\_\_, Director  
 Claims & Recovery Division  
 Office of Surety Guarantees

SUBJECT: REINSTATEMENT OF \_\_\_\_\_  
 SBG#  
 SURETY

The subject file, including claims information, is being transmitted with this memorandum of reinstatement into your normal underwriting portfolio.

As of \_\_\_\_\_ claims paid have been fully reimbursed and the following disposition applies to this file:

Closed-no loss (no claims/expenses paid by survey). \_\_\_\_\_

Closed-no loss (claims/expenses reimbursed in full by principal;/indemnitor). \_\_\_\_\_

Surety settled with indemnitor for \$ \_\_\_\_\_  
 with loss to SBA of \$ \_\_\_\_\_

Comments:

Please consider this file for further bond guarantee assistance based upon the disposition information above and your assessment of its future in the Surety Bond Guarantee Program.





## Glossary

The terms listed below are frequently used in SBA's Surety Bond Guarantee Program. The definitions are quoted or paraphrased from published definitions, and reflect common usage and connotation within the program.

1. **Ad Damnum:** In pleading, "To the damage." The technical name of that clause of the writ, declaration, or, more commonly, the complaint, which contains a statement of the plaintiff's money loss, or the damages which he claims. The "ad damnum" in the complaint is in excess of \$100,000.
2. **Amicable Demand:** Agreed or assented to by parties having conflicting interests or a dispute; as opposed to hostile or adversary.
3. **Attorney-in-Fact:** Any person who is authorized by another to act in his/her place, either in a particular matter or generally. The authorization is embodied in a document known as a "letter of attorney" while the authority itself is known as "power of attorney"
4. **Balance Sheet:** A statement of financial position of any economic unit disclosing its assets, at cost, depreciated cost, or other indicated value, its liabilities, and the equity of the owners in conformity with generally accepted accounting principles.
5. **Bankruptcy:** The state or condition of being unable to meet one's financial obligation; the legal procedure under which the affairs of an insolvent person's business are turned over to a receiver or trustee for the administration and payment of debts.
  - a) **Voluntary Bankruptcy:** When a person or business cannot pay its debts, it can voluntarily petition the court to declare it bankrupt.
  - b) **Involuntary Bankruptcy:** The creditors of a person or business file the petition for bankruptcy against the debtor.
6. **Types of Bankruptcies**
  - a) **Chapter 7:** A Chapter 7 bankruptcy is known as a liquidation. Generally, the debtor has few, if any, assets. What assets a debtor may have are sold and the money distributed to its creditors. Again, those assets are in the vast majority of cases, non-existent. Chapter 7 is available to individuals. The court will, however, allow a corporation to change from a Chapter 11 bankruptcy to a Chapter 7 bankruptcy.
  - b) **Chapter 11:** A Chapter 11 bankruptcy is known as a reorganization. It is available to both corporations and individuals. Under a Chapter 11 bankruptcy, the debtor usually possesses sufficient assets, or has the capacity to obtain them, to satisfy at least a portion of the creditors' claims. In the case of a corporation, the debtor will remain in business and the future income is used to pay the creditors. An individual who files a Chapter 11 usually is a person that is capable of earning a good living but does not have a regular wage, such as to allow him to file a Chapter 13. In a Chapter 11, the payoff may be in

any amount, from one cent on the dollar through 100 cents on the dollar.

- c) **Chapter 13**: A Chapter 13 bankruptcy is known as the wage earners' bankruptcy. To qualify, an individual must have a steady source of income, though not necessarily wages. The court determines the "disposable" amount of the debtor's income. Again, a prepayment schedule is worked out which allows for partial or full reimbursement of all creditors.
- 7. **Bid Bond**: A bond given by a bidder for a supply, service, or construction contract to guarantee that the bidder, if awarded such a contract within the time stipulated, will enter into the contract and furnish the prescribed performance bond. Default will ordinarily result in liability of the principal and the surety for the difference between the amount of the principal's bid and of the next low bidder who can qualify for the contract.
- 8. **Bond**: An agreement whereby one party, called the surety, obligates itself to a second party called the obligee, to guarantee the successful performance of a contract by a third party, called the principal.
- 9. **Bond Penalty**: The amount by which a surety must respond for loss under the terms of the given bond, i.e., the face amount of the bond.
- 10. **Bonding Lines**: A commitment to a surety company by the SBA that allows the surety to issue bid, payment, and performance bonds to a specified small contractor within preapproved terms, conditions, and limitations.
- 11. **Cede**: To pass on to another insurer (the reinsurer) all or part of the insurance written by an insurer (the ceding insurer) with the object of reducing the possible liability of the latter.
- 12. **Ceding Company**: An insurer that has bought reinsurance protection as distinguished from the reinsurer that has issued the reinsurance protection.
- 13. **Cession**:
  - a) The unit of insurance passed to a reinsurer by a primary company that issued a policy to the original insured. A cession may accordingly be the whole or a portion of single risks, defined policies, or defined divisions of business, as agreed to in the reinsurance contract.
  - b) The act of ceding where such an act is necessary to invoke the reinsurance protection.
- 14. **Claim**: A party's demand for something believed due from another party.
- 15. **Claimant**: One who has asserted a claim under the bond.
- 16. **Collateral**: Personal or business possessions assigned by the principal as a pledge of repayment to the surety in the event of default by the principal. **Collateral Document**: A legal document

securing the item pledged as collateral, i.e., promissory notes, mortgages, assignments, etc.'

17. Collateral Documents: A legal document securing the item(s) pledged as collateral, i.e., promissory notes, mortgages, assignments, etc.
18. Collection Agency: A private firm hired by the surety to locate the principal and indemnitors in an effort to collect the debt owed to the surety. Generally, they work on a contingency basis so there is no cost to the surety or SBA unless monies are recovered.
19. Contract Funds: Funds that are paid to the principal for the completion of the project. These progress payments are usually cash and made monthly, based upon estimates of work completed and materials used. These funds are also usually escrowed in a bank by the obligee, and have a direct effect on the principal's financing of the job and his working capital.
20. Contract Price: The whole sum of money which passes from the obligee to the principal when final settlement is made between the two under the contract, it is the basis of the premium charge on most types of construction bonds.
21. Co-Surety: One of two or more surety companies participating directly in a bond. Their obligation to the obligee (owner) is joint and several but sometimes a limit of liability for each surety is stated between themselves. An authorized representative of each co-surety must sign the guarantee agreement (SBA Form 990) and the lead or primary surety must be designated. If a default occurs, claim payments are made to the lead surety only.
22. Current Assets: Items of ownership of a person or business that will be converted into cash in the normal operation of business at an early date, usually within 1 year. These are also referred to as "short term" assets.
23. Deductible: The portion of an insured loss to be borne by the insured before he is entitled to recovery from the insurer; an amount of loss which is to be borne by the surety itself and is therefore deducted from the total loss on which a claim is made to the SBA.
24. Default: The failure of a principal to meet obligation when due. This gives rise immediately to the surety's obligation to the obligee provided there are no conditions precedent to the surety's liability.
25. Diary: A term used for scheduling a specific time to follow-up on an action.
26. Discharge of Debtor: The debtor is legally released from the obligation of all his debts which were or might be proved in the bankruptcy proceedings so that he may thereafter engage in business and acquire property without its being liable for the satisfaction of such former debts.
27. Dun and Bradstreet: Dun and Bradstreet is a private firm which gathers financial information about individuals and firms and prepares a report describing the financial condition of the subject. Dun and Bradstreet deals only with its subscribers and in no way assumes any of the

subscriber's risk.

28. **Equifax:** A claim investigative firm whose services are available to the general public. The types of reports available include a Current Assets and Income Report, a Skip-Trace Locate Report, and the Recovery and Subrogation Report.
29. **Estimated Loss:** An estimate of the amount that a surety expects to pay for reported and unreported claims under the terms of the bond.
30. **Faculative Reinsurance:** Reinsurance in which specific coverage is arranged individually for each exposure. This is contrasted with treaty reinsurance, under which each member of the group agrees in advance to cover risks on some predetermined basis.
31. **Financial Reports:** Reports that describe the financial condition of a business or individual at a specific period of time.
32. **Foreclosure:** The action or legal proceeding brought by the creditor against a debtor under which the debtor is required to pay the debt in total or forfeit his right of redemption of the property put up as security. The creditor, upon gaining full possession of the property may keep it or sell it in a foreclosure sale, depending upon State laws.
33. **Garnishment:** A statutory proceeding whereby a person's property, money, or credits in possession or under control of, or owing by, another are applied to payment of former's debt to third person by proper statutory process against debtor and garnishee. Usually the defendant is required to surrender a percentage of his future wages in order to satisfy an outstanding debt.
34. **General Indemnity Agreement:** A written contract between the surety and the indemnitor whereby the indemnitors undertake and agree to reimburse the surety for monetary loss suffered by the surety as a result of a default by the principal. It may be signed by individual or corporate indemnitors, who determine what assets are liable for the loss.
35. **Guaranty:** An undertaking or contract to assume the liability for a debt, to perform a duty upon the default of another, or in general to give assurance that a thing will be done, or an obligation filled as promised. It provides that the guarantor will be liable for the failure to perform.
36. **Homestead Exemption Laws:** Laws passed in most of the states allowing a household or head of a family to designate a house and land as his homestead, and exempting the same homestead from execution for his general debts.
37. **Improvement:** A change in the condition of the property in real estate, often the addition of a building to a vacant lot.
38. **Incurred Loss:** The total of actual surety payouts plus outstanding reserve less recovery received, contract funds anticipated, and collateral (e.g. cash, certificates of deposit, and irrevocable letters of credit).

39. Indemnitor: A person or company which agrees with a surety to hold surety harmless from any loss or exposure incurred on a bond that it issues.
40. Indemnity: A collateral contract or assurance by which one person engages to secure another against an anticipated loss; this term pertains to liability for loss shifted from one person held legally responsible to another person.
41. Imminent Breach: A threat to the successful completion of a bonded contract which, unless remedied by the surety, makes a default under the bond appear to be inevitable.
42. Insolvency: The condition in which one's total assets, if realized, would not be sufficient to cover one's total liabilities; the inability of a borrower to meet financial obligations as they mature; or having insufficient assets to pay legal debts.
43. Judgment: The final decree, ruling, or sentence handed down by a court after hearing all of the evidence in a trial or other proceeding.
- a) **Consent Judgment**: A judgment given in the progress of a cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit.
  - b) **Default Judgment**: A judgment rendered in consequence of the non-appearance of the defendant.
  - c) **Interlocutory Judgment**: A judgment given in the progress of cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit.
  - d) **Judgment Creditor**: One who has obtained a judgment against his debtor, under which he can enforce execution.
  - e) **Judgment Debtor**: A person against whom judgment has been recovered and which remains unsatisfied.
  - f) **Judgment Lien**: A lien binding the real estate of a judgment debtor, in favor of the holder of the judgment and giving the latter a right to levy on the land for the satisfaction of his judgment.
44. Lien: The right or claim that a creditor has against the property of a debtor, under which he may detain or seize the property pending the payment of a debt.
45. Liquidation: The disposal of the collateral securing a loan; conversion of assets into cash.
46. Liquidated Damages: The term is applicable when the amount of the damages has been ascertained by the judgement in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other.
47. Lis Pendens: A pending suit. Jurisdiction, power, or control that courts acquire over property

in suit pending action and until final judgment. Notice of Lis Pendens: A notice filed on public record for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

48. Litigation: Contest in a court of law for the purpose of enforcing a right or seeking a remedy; the practice of taking legal action through the judicial process.
49. Long Arm Statute: Various State legislative acts which provide for personal jurisdiction, via substituted service of process over persons or corporations which are nonresidents of the State, and which voluntarily go into the State. This may be directly, by agent, or by communication with persons in the state, for limited purposes in actions which concern claims relating to the performance or execution of those purposes.
50. Maintenance: In general, the work of keeping up property or equipment in good sound condition or the cost of doing so; the upkeep or preservation of the condition of property.
51. Material Misrepresentation: Any statement of alleged fact which is untrue or partly untrue or which is so stated as to lead to false conclusions and which has an important or critical effect on the outcome.
52. Miller Act: Federal statute which requires the posting of performance and payment bonds before an award may be made for a contract beyond a certain amount for construction, alteration, or repair of a public building or public work of the U.S. Government.
53. Net Worth: The total assets of a person or business less the total liabilities (amounts due to creditors).
54. Non-Recoverable Expenses: Expenses incurred but not legally recoverable from the borrower.
55. Novation: Substitution of a new contract debt, or obligation for an existing one, between the same or different parties. The substitution by mutual agreement of one debtor for another or of one creditor for another, whereby the old debt is extinguished. The requisites of a novation are a previous valid obligation, an agreement of all the parties to a new contract, the extinguishment of the old obligation, and the validity of the new one.
56. Obligee: (Also called "owner") the party to whom someone else is obligated under a contract; the party protected by the bond against loss; an obligee may be a person, firm, corporation, government, or an agency of a government.
57. Payback: A plan which specifies the gross sum of recovery money to be paid to the surety by the principal and/or indemnitors and specifies a time schedule to be adhered to for reimbursement; it also applies to a payment schedule which will be utilized for reimbursement from the surety to SBA.

58. **Payment Bond:** A bond given for the labor and material used in the work which the principal is obligated to pay under the contract. This liability may be contained in the performance bond, in which case a separate labor and material bond (payment bond) is not given.
59. **Penal Sum of the Bond:** Also called "penalty" and "bond penalty," is the maximum amount for which a surety company may normally be held liable under the bond.
60. **Performance Bond:** A bond which indemnifies the owner against loss resulting from the failure of the contractor to complete the work in accordance with the plans and specifications; performance bonds frequently incorporate payment bond liability.
61. **Power of Attorney:** An instrument authorizing another to act as one's agent or attorney to the extent set forth in the instrument creating the power.
62. **Prime Contractor:** Person with whom the obligee has contracted to perform the contract.
63. **Principal:** The one who is primarily responsible for fulfilling the obligation set forth on the contract and for whom the bond is issued. The principal is usually the contractor or subcontractor for whom SBA's surety bond guarantee is written.
64. **Quota Share Reinsurance:** A form of pro rata reinsurance (proportional) in which the reinsurer assumes an agreed percentage of each insurance policy being insured and shares all premiums and losses accordingly with the reinsured.
65. **Recovery:** Reimbursement received by a surety from subrogation, indemnitors, or from salvage following a loss.
66. **Refund:** The amount returned to SBA as a result of SBA's inadvertent overpayment to a surety company.
67. **Reimbursement:** Amount that is repaid for the loss incurred.
68. **Reinsurance:** The shifting of risk by a primary insurer (known as the reinsurer).
69. **Retained Funds:** A reserve which is usually held by the obligee from the contract funds until the work has been completed and paid to the principal after the lien period has expired.
70. **Retention:** The portion of a risk kept by an insurer for its own account while ceding the balance to a reinsurer; also refers to that portion of a risk retained by a corporation for its own account, the balance being transferred to a commercial insurer.
71. **Risk:** The element of uncertainty regarding economic loss.
72. **Rumble:** A situation where a claim has been made against a bond, but the surety expects the claim to be satisfied with no loss or expense.



73. **Salvage:** Property which is recovered from the principal or indemnitors which is liquidated to offset, in whole or in part, the loss and expense incurred by a surety in satisfying obligations it has sustained under a bond.
74. **Settlement:** An agreement by which parties having disputed matters between them determine what is coming from one to the other; any agreement for the adjustment, liquidation, or disposal of obligation; satisfaction of a claim or demand between parties.
75. **Specialty Surety:** A surety company which specializes in writing surety bonds for business which cannot ordinarily obtain bonding through the standard bond market.
76. **Standard Surety:** A surety company which charges the standard premium rates for contract bonds; usually is a well-known company which adheres to a more conservative underwriting philosophy.
77. **Subrogation:** The right of one who has paid to be indemnified by the other; the legal right of the surety to recover losses it paid to the obligee.
78. **Subcontract:** A contract award made by a prime contractor to a any contractor for a portion of the work received by the prime contractor.
79. **Subcontractor:** A person who has contracted with a prime contractor or with another subcontractor to perform a contract.
80. **Surety Bond:** A written agreement wherein one party (the surety) obligates itself to a second party (the obligee or beneficiary) to answer for the default of a third party (the principal) in failing to perform specified acts within a stated time. Such obligations include payment of debts and responsibility for defaults.
81. **Surety Company:** Usually a corporation listed on the Department of the Treasury Circular 570, "Surety Companies Acceptable on Federal Bonds," and as otherwise qualified by the Small Business Administration, which guarantees to the obligee (owner) the payment of money or the performance of a contract in the event the principal (contractor) defaults on the performance of said contract. The surety company is entitled to be indemnified (compensated for actual loss sustained) via an indemnity agreement from the principal and principal's indemnitors.
82. **Treaty:** A contract or arrangement under which risks or shared by agreement between insurers, usually through a process of reinsurance.
83. **Treaty Reinsurance:** A reinsurance agreement between an insurance company and a reinsurer, usually for one year or longer, which may be divided into two broad classifications:
  - a) the participating type, which provides for sharing of risks between the ceding company and the reinsurer; and

- b) the excess type, which provides for indemnity by the reinsurer for losses that exceed some specified, predetermined amount.

84. Trust Account: Where money or property is deposited to be kept intact and not co-mingled with other funds or property of the bank, and is to be returned in kind to the depositor or devoted to the particular purpose or requirement of depositor payment of particular debts or obligations.



### References

Ruck, Andrew J. and Bevan, John S., Guidelines for Evaluating Contract Bond Forms and Contract Documents, Philadelphia, PA: Duanes Morris and Heckscher, 1992.

Clore, Duncan L., Bond Default Manual, Second Edition. Chicago, IL: Publications, Planning and Marketing, American Bar Association, 1995.

Gallagher, Edward G., The Law of Suretyship, Chicago, IL: Publications, Planning and Marketing, American Bar Association, 1993.

Remmen, Albert. The Contract Bond Book, Cincinnati, OH: The National Underwriter Co., 1977.

Strain, Robert W. Insurance Words and Their Meanings, Indianapolis, IN: Rough Notes Co., 1981.

Gleene, Mark R. and Trieschmann, James S., Risk and Insurance, Fifth Edition. Cincinnati, OH: South-Western Publishing Co., 1981.

Black, Henry C., Black's Law Dictionary, Fifth Edition. St. Paul, MN: West Publishing Co., 1979.

Clark, Donald T. and Gottfried, Bert A., University Dictionary of Business and Finance, New York, NY: Thomas Y.Crowell Publishers, 1957.

